

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

WIFIA LOAN AGREEMENT

For Up to \$137,100,000

With

CITY OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN

For the

**WATER UTILITY PORTION OF
GREAT LAKES WATER SUPPLY PROJECT
(WIFIA – N18147WI)**

Dated as of August 6, 2020

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WIFIA LOAN AGREEMENT

THIS WIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of August 6, 2020, is by and between **CITY OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN**, a municipality organized under the laws of the State of Wisconsin (the “**State**”), with an address at 201 Delafield Street, Waukesha, WI 53188 (the “**Borrower**”), and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “**Administrator**”), with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460 (the “**WIFIA Lender**”).

RECITALS:

WHEREAS, the Congress of the United States of America enacted the Water Infrastructure Finance and Innovation Act, as amended by Section 1445 of the Fixing America’s Surface Transportation Act of 2015, as further amended by Section 5008 of the Water Infrastructure Improvements For the Nation Act of 2016 and by Section 4201 of America’s Water Infrastructure Act of 2018 (collectively, as the same may be amended from time to time, the “**Act**” or “**WIFIA**”), which is codified as 33 U.S.C. §§ 3901-3914;

WHEREAS, the Act authorizes the WIFIA Lender to enter into agreements to provide financial assistance with one or more eligible entities to make loans with appropriate security features to finance a portion of the eligible costs of projects eligible for assistance;

WHEREAS, the Borrower has requested that the WIFIA Lender make the WIFIA Loan (as defined herein) in a principal amount not to exceed \$137,100,000 to be used to pay the Water Utility Portion (as defined herein) of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for WIFIA financial assistance dated November 18, 2019 (the “**Application**”);

WHEREAS, in implementing the Water Utility Portion of the Project with disbursements of the WIFIA Loan, the Borrower will act through the Waukesha Water Utility, and in implementing the portion of the Project related to return flow activities, which the Borrower anticipates funding with the proceeds of a loan from the State of Wisconsin Clean Water Loan Program, the Borrower will act through the Waukesha Wastewater Utility;

WHEREAS, as of the date hereof, the Administrator has approved WIFIA financial assistance for the Water Utility Portion of the Project to be provided in the form of the WIFIA Loan, subject to the terms and conditions contained herein;

WHEREAS, based on the Application and the representations, warranties and covenants set forth herein, the WIFIA Lender proposes to make funding available to the Borrower for a portion of the costs of the Water Utility Portion of the Project through the issuance of the WIFIA Bond (as defined herein), upon the terms and conditions set forth herein;

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the WIFIA Bond in accordance with the terms and provisions of this Agreement and of the WIFIA Bond; and

WHEREAS, the WIFIA Lender has entered into this Agreement in reliance upon, among other things, the information and representations of the Borrower set forth in the Application and the supporting information provided by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the WIFIA Lender as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1. Definitions.

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

“2018 BAN” means the Borrower’s Waterworks System Revenue Bond Anticipation Note, Series 2018, dated April 2, 2018.

“Acceptable Credit Rating” means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers or issues a repurchase agreement, ‘A+’, ‘A1’ or the equivalent rating from each Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable; and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from each Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.

“Act” means the Act as defined in the recitals hereto.

“Additional Construction Contract” means each Construction Contract entered into after the Effective Date.

“Additional Parity Obligations” means any obligations of the Borrower that have been issued or incurred after the Effective Date payable from the Net Revenues and standing on a parity and equality with the WIFIA Bond with respect to the Lien on the Net Revenues.

“Additional Subordinate Obligations” means any obligations of the Borrower that have been issued or incurred after the Effective Date payable from the Net Revenues and subordinate in right of payment and right of security with the WIFIA Bond with respect to the Lien on the Net Revenues.

“Administrator” has the meaning provided in the preamble hereto.

“**Agreement**” has the meaning provided in the preamble hereto.

“**Annual Budget**” means the Borrower’s budget of estimated receipts and expenditures with respect to the System, including a budget of Current Expenses, for any Borrower Fiscal Year and delivered pursuant to Section 16(a)(i) (*Reporting Requirements – Annual Budget; Financial Plan*).

“**Annual Maximum Disbursement Certificate**” has the meaning provided in Section 11(b)(ii)(A) (*Conditions Precedent to Disbursements*).

“**Anticipated WIFIA Loan Disbursement Schedule**” means the schedule set forth in **Exhibit B** (*Anticipated WIFIA Loan Disbursement Schedule*), reflecting the anticipated disbursement of proceeds of the WIFIA Loan, as such schedule may be amended from time to time pursuant to Section 4(d) (*Disbursement Conditions; Approval of Requisition*).

“**Anti-Corruption Laws**” means all laws, rules and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption.

“**Anti-Money Laundering Laws**” means all U.S. and other applicable laws, rules and regulations of any jurisdiction from time to time concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

“**Application**” has the meaning provided in the recitals hereto.

“**Bank Secrecy Act**” means the Bank Secrecy Act of 1970, as amended, and the regulations promulgated thereunder.

“**Bankruptcy Related Event**” means, with respect to the Borrower, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) the Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) fail to make a payment of WIFIA Debt Service in accordance with the provisions of Section 8 (*Payment of Principal and Interest*) and such failure is not cured within thirty (30) days following notification by the WIFIA Lender of failure to make such payment, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each case under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause

(b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law; (c) (i) any Person shall commence a process pursuant to which all or a substantial part of the Net Revenues may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Obligations, or (ii) any Person shall commence a process pursuant to which all or a substantial part of the Net Revenues may be sold or otherwise disposed of pursuant to a sale or disposition of such Net Revenues in lieu of foreclosure; or (d) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official shall transfer, pursuant to directions issued by the holders of Obligations, funds on deposit in any of the Funds and Accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under any other Obligation Document for application to the prepayment or repayment of any principal amount of the Obligations other than in accordance with the provisions of the Obligation Documents.

“Base Case Financial Model” means a financial model prepared by the Borrower forecasting the capital costs of the System (including the Project) and the rates, revenues, operating expenses and major maintenance requirements of the System (including the Project) for time periods through the Final Maturity Date and based upon assumptions and methodology provided by the Borrower and acceptable to the WIFIA Lender as of the Effective Date, which model shall be provided to the WIFIA Lender as a fully functional Microsoft Excel-based financial model or such other format requested by the WIFIA Lender.

“Bond Year” means the twelve (12)-month period ending on each May 1.

“Borrower” has the meaning provided in the preamble hereto.

“Borrower Fiscal Year” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on January 1 of any calendar year and ending on December 31 of such calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior written notice to the WIFIA Lender in accordance with Section 15(f) (*Negative Covenants – Fiscal Year*).

“Borrower’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 21 (*Borrower’s Authorized Representative*).

“Business Day” means any day other than a Saturday, a Sunday or a day on which offices of the Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York or Waukesha, Wisconsin.

“Closing Certificate” has the meaning provided in Section 11(a)(viii) (*Conditions Precedent – Conditions Precedent to Effectiveness*).

“Code” means the Internal Revenue Code of 1986, or any successor tax code, as amended from time to time, and the applicable regulations proposed or promulgated thereunder.

“Congress” means the Congress of the United States of America.

“Construction Contract” means any prime contract entered into by the Borrower with respect to the Project that involves any construction activity (such as demolition, site preparation, civil works construction, installation, remediation, refurbishment, rehabilitation, or removal and replacement services). For the avoidance of doubt, “Construction Contract” shall include each Existing Construction Contract and, upon the effectiveness thereof, each Additional Construction Contract.

“Construction Contractor” means any Person (other than the Borrower) party to a Construction Contract.

“Construction Period” means the period from the Effective Date through the Substantial Completion Date.

“Construction Period Servicing Fee” has the meaning set forth in Section 10(a)(ii) (*Fees and Expenses – Fees*).

“Construction Schedule” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as **Schedule II** (*Construction Schedule*), and (b) any updates thereto included in the periodic reports submitted to the WIFIA Lender pursuant to Section 16(c) (*Reporting Requirements – Construction Reporting*) most recently approved by the WIFIA Lender.

“Control” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms **“Controlling”** and **“Controlled by”** have meanings correlative to the foregoing.

“CPI” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted) or its successor, published by the Bureau of Labor Statistics and located at <https://www.bls.gov/news.release/cpi.t01.htm>.

“Current Expenses” means the reasonable and necessary costs of operating, maintaining, administering and repairing the System, including salaries, wages, costs of materials and supplies, insurance and audits and maintenance of a replacement fund, but excluding depreciation, debt service, tax equivalents and capital expenditures.

“Debt Service Fund” means the Waterworks Revenue Bond and Interest Special Redemption Fund of the Borrower, which was created by an ordinance adopted September 22, 1953, and which shall be the “special redemption fund” as such term is defined in Section 66.0621, Wisconsin Statutes.

“Debt Service Payment Commencement Date” means the Payment Date immediately succeeding the Initial Disbursement Date; provided that the Debt Service Payment Commencement Date shall in no event be later than five (5) years after the Substantial Completion Date.

“Default” means any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means an interest rate equal to the sum of (a) the WIFIA Interest Rate plus (b) two hundred (200) basis points.

“Depreciation Fund” means the depreciation fund created for the System pursuant to Section 66.0621(4)(c) and (d), Wisconsin Statutes for the purpose of restoring any deficiencies in the Debt Service Fund and for repairs, replacements, new constructions, extensions or additions of the System.

“Development Default” means (a) the Borrower abandons work or fails, in the reasonable judgment of the WIFIA Lender, to diligently prosecute the work related to the Project or (b) the Borrower fails to achieve Substantial Completion of the Project by the date that is two (2) years after the Projected Substantial Completion Date as of the Effective Date.

“Dollars” and **“\$”** means the lawful currency of the United States of America.

“Effective Date” means the date of this Agreement.

“Eligible Project Costs” means amounts in the Project Budget approved by the WIFIA Lender, which are paid by or for the account of the Borrower in connection with the Project (including, as applicable, Project expenditures incurred prior to the receipt of WIFIA credit assistance), which shall arise from the following:

- (a) development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;

- (b) construction, reconstruction, rehabilitation, and replacement activities;

- (c) the acquisition of real property or an interest in real property (including water rights, land relating to the Project and improvements to land), environmental mitigation (including acquisitions pursuant to Section 3905(8) of Title 33 of the United States Code), construction contingencies, and acquisition of equipment; or

- (d) capitalized interest (with respect to Obligations other than the WIFIA Loan) necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction;

provided that (i) Eligible Project Costs must be consistent with all applicable federal law, including the Act and (ii) only Eligible Project Costs relating to the Water Utility Portion of the Project may be financed with the proceeds of the WIFIA Bond.

“Eligible Project Costs Documentation” has the meaning provided in Section 1 of **Exhibit D** (*Requisition Procedures and Form of Requisition*).

“**EMMA**” means the Electronic Municipal Market Access system as described in 1934 Act Release No. 59062 and maintained by the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)1 of the Securities Exchange Act of 1934, as amended, and its successors.

“**Environmental Laws**” has the meaning provided in Section 12(p) (*Representations and Warranties of Borrower – Environmental Matters*).

“**EPA**” means the United States Environmental Protection Agency.

“**Event of Default**” has the meaning provided in Section 17(a) (*Events of Default and Remedies*).

“**Existing Construction Contracts**” means each Construction Contract existing as of the Effective Date.

“**Federal Fiscal Year**” means the fiscal year of the Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

“**Final Disbursement Date**” means the earliest of (a) the date on which the WIFIA Loan has been disbursed in full; (b) the last anticipated date of disbursement set forth in the then-current Anticipated WIFIA Loan Disbursement Schedule; (c) the date on which the Borrower has certified to the WIFIA Lender that it will not request any further disbursements under the WIFIA Loan; (d) the date on which the WIFIA Lender terminates its obligations relating to disbursements of any undisbursed amounts of the WIFIA Loan in accordance with Section 17 (*Events of Default and Remedies*); and (e) the date that is one (1) year after the Substantial Completion Date.

“**Final Maturity Date**” means the earlier of (a) May 1, 2058 (or such earlier date as is set forth in an updated **Exhibit F** (*WIFIA Debt Service*) pursuant to Section 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*)); and (b) the Principal Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.

“**Financial Statements**” has the meaning provided in Section 12(t) (*Representations and Warranties of Borrower – Financial Statements*).

“**Flow of Funds**” means the requirements set forth on **Schedule V** (*Flow of Funds*).

“**Funds and Accounts**” means the Revenue Fund, the Operation and Maintenance Fund, the Debt Service Fund (including the Parity Principal and Interest Account, the Subordinate Principal and Interest Account and the Reserve Account), the Depreciation Fund, the Surplus Fund and any other fund or account with respect to the System.

“**GAAP**” means generally accepted accounting principles for U.S. state and local governments, as established by the Government Accounting Standards Board (or any successor entity with responsibility for establishing accounting rules for governmental entities), in effect from time to time in the United States of America.

“Governing Body” means the Common Council of the Borrower, or such other body as may hereafter be the chief legislative body of the Borrower.

“Government” means the United States of America and its departments and agencies.

“Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“Governmental Authority” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“Gross Earnings” means the gross earnings of the System, including earnings of the System derived from waterworks charges imposed by the Borrower, all payments to the Borrower under any service agreements between the Borrower and any contract users of the System, and any other monies received from any source including all rentals and fees and any special assessments levied and collected in connection with the System.

“Indemnitee” has the meaning provided in Section 32 (*Indemnification*).

“Initial Disbursement Date” means the date of the first disbursement of the WIFIA Loan.

“Insolvency Laws” means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

“Interest Only Period” means the period commencing on the Debt Service Payment Commencement Date and ending on November 1, 2024 (or on such earlier date as all amounts due or to become due to the WIFIA Lender hereunder have been irrevocably paid in full in cash).

“Interest Payment Date” means each May 1 and November 1.

“Investment Grade Rating” means a public rating no lower than ‘BBB-’, ‘Baa3’, ‘bbb-’, ‘BBB (low)’, or higher, from a Nationally Recognized Rating Agency.

“Lien” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

“Loan Amortization Schedule” means the loan amortization schedule reflected in the applicable column of **Exhibit F** (*WIFIA Debt Service*), as amended from time to time in accordance with Section 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*).

“Material Adverse Effect” means a material adverse effect on (a) the System, the Project or the Net Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower, (c) the legality, validity or enforceability of any material provision of any WIFIA Loan Document, (d) the ability of the Borrower to enter into, perform or comply with any of its material obligations under any WIFIA Loan Document, (e) the validity, enforceability or priority of the Liens provided under the WIFIA Loan Documents on the Net Revenues or (f) the WIFIA Lender’s rights or remedies available under any WIFIA Loan Document.

“Nationally Recognized Rating Agency” means any nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission.

“NEPA” means the National Environmental Policy Act of 1969, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“NEPA Determination” means the Finding of No Significant Impact for the Project issued by EPA on August 3, 2020 in accordance with NEPA.

“Net Revenues” means Gross Earnings of the System after deduction of Current Expenses.

“Non-Debarment Certificate” means a certificate, signed by the Borrower’s Authorized Representative, as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters with respect to the Borrower and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. 1532.995), substantially in the form attached hereto as **Exhibit C** (*Form of Non-Debarment Certificate*).

“Non-Lobbying Certificate” means a certificate, signed by the Borrower’s Authorized Representative, with respect to the prohibition on the use of appropriated funds for lobbying pursuant to 49 C.F.R. § 20.100(b), substantially in the form attached hereto as **Exhibit E** (*Form of Non-Lobbying Certificate*).

“Obligation Document” means any indenture, bond, credit agreement, note, reimbursement agreement, letter of credit, guarantee or any other agreement, instrument or document pursuant to which any Obligation is incurred by the Borrower.

“Obligations” means Parity Obligations and Subordinate Obligations.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Operating Period Servicing Fee” has the meaning set forth in Section 10(a)(iii) (*Fees and Expenses – Fees*).

“Operation and Maintenance Fund” means the fund established by the Borrower pursuant to Section 66.0621(4)(c) of the Wisconsin Statutes to provide for sufficient revenues to operate and maintain the System.

“Organizational Documents” means: (a) the constitutional and statutory provisions that are the basis for the existence and authority of the Borrower, including any enabling statutes, ordinances or public charters and any other organic laws establishing the Borrower and (b) the resolutions, bylaws, code of regulations, operating procedures or other organizational documents (including any amendments, modifications or supplements thereto) of or adopted by the Borrower by which the Borrower, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived.

“Outstanding Parity Obligations” means the obligations of the Borrower that have been issued or incurred prior to the Effective Date payable from the Net Revenues and standing on a parity and equality with the WIFIA Bond with respect to the Lien on the Net Revenues, as described in Part A of **Schedule III** (*Existing Indebtedness*).

“Outstanding Subordinate Obligations” means the obligations of the Borrower that have been issued or incurred prior to the Effective Date payable from the Net Revenues and subordinate in priority of payment and priority of security to the WIFIA Bond with respect to the Lien on the Net Revenues, as described in Part B of **Schedule III** (*Existing Indebtedness*).

“Outstanding WIFIA Loan Balance” means (a) the aggregate principal amount of the WIFIA Loan drawn by the Borrower minus (b) the aggregate principal amount of the WIFIA Loan repaid by the Borrower, as determined in accordance with Section 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*).

“Parity Obligations” means the Outstanding Parity Obligations, the WIFIA Bond and the Additional Parity Obligations.

“Parity Principal and Interest Account” means the debt service account within the Debt Service Fund established for the benefit of the holders of Parity Obligations.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended, and all regulations promulgated thereunder.

“Payment Date” means each Interest Payment Date and each Principal Payment Date.

“Payment Default” has the meaning provided in Section 17(a)(i) (*Events of Default and Remedies – Payment Default*).

“Permitted Investments” means legal investments subject to the provisions of Section 66.0603(1m), Wisconsin Statutes.

“Permitted Liens” means:

(a) Liens imposed pursuant to the WIFIA Loan Documents and the other Obligation Documents;

(b) Liens imposed by law, including Liens for taxes that are not yet due or are being contested in compliance with Section 14(j) (*Affirmative Covenants – Material Obligations*);

(c) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 14(j) (*Affirmative Covenants – Material Obligations*);

(d) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, and other social security laws or regulations;

(e) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(f) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 17(a)(vi) (*Events of Default and Remedies – Material Adverse Judgment*); and

(g) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that, in any case, do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower.

“Person” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“Principal Payment Date” means each May 1.

“Project” means the Great Lakes Water Supply Project, consisting of water supply and return flow activities connected with the provision of a new Lake Michigan water supply and return flow via the Root River, located in Waukesha and Milwaukee Counties, as described in more detail in **Schedule VI** (*Project Description*).

“Project Budget” means the budget for the Project attached to this Agreement as **Schedule I** (*Project Budget*) showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of funds for the Project.

“Projected Substantial Completion Date” means July 1, 2023, as such date may be adjusted in accordance with Section 16(c) (*Reporting Requirements – Construction Reporting*).

“Public Benefits Report” has the meaning provided in Section 16(e) (*Reporting Requirements – Public Benefits Report*).

“Rate Covenant” means the requirements specified in Section 14(a)(i) (*Affirmative Covenants – Rate Covenant*).

“Related Documents” means the WIFIA Loan Documents and the other Obligation Documents.

“Requisition” has the meaning provided in Section 4(a) (*Disbursement Conditions; Approval of Requisition*).

“Reserve Account” means the reserve account within the Debt Service Fund established for the benefit of the holders of Parity Obligations secured by such reserve account.

“Revenue Fund” means the fund created by the Borrower in accordance with Section 66.0621, Wisconsin Statutes, into which the Gross Earnings are deposited.

“Sanctioned Country” means, at any time, a country or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or controlled by any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered, or enforced from time to time by the Government, including those administered by OFAC or the U.S. Department of State.

“Servicer” means such entity or entities as the WIFIA Lender shall designate from time to time to perform, or assist the WIFIA Lender in performing, certain duties hereunder.

“Servicing Fee” means the Servicing Set-Up Fee and any Construction Period Servicing Fee or Operating Period Servicing Fee.

“Servicing Set-Up Fee” has the meaning set forth in Section 10(a)(i) (*Fees and Expenses – Fees*).

“State” has the meaning provided in the preamble hereto.

“Subordinate Obligations” means Outstanding Subordinate Obligations and Additional Subordinate Obligations.

“Subordinate Principal and Interest Account” means the debt service account within the Debt Service Fund established for the benefit of the holders of Subordinate Obligations.

“Substantial Completion” means, with respect to the Project, the stage at which the Project is able to perform the functions for which the Project is designed.

“Substantial Completion Date” means the date on which the Borrower certifies to the WIFIA Lender, with evidence satisfactory to the WIFIA Lender, that Substantial Completion has occurred.

“Surplus Fund” means the fund created for the System by the Borrower pursuant to Section 66.0621(4)(c) and (f), Wisconsin Statutes for the disposition of surplus amounts in the other Funds and Accounts.

“System” means the entire waterworks system of the Borrower specifically including the Water Utility Portion of the Project and including all property of every nature now or hereafter owned by the Borrower for the extraction, collection, treatment, storage and distribution of water, including all improvements and extensions thereto made by the Borrower, including all real and personal property of every nature comprising part of or used or useful in connection with such waterworks system and including all appurtenances, contracts, leases, franchises, and other intangibles.

“Technical and Rate Consultant” means a single individual or firm, or a combination of one or more individuals or firms, not related to the Borrower and considered independent with respect to the Borrower (i.e. not an employee of the Borrower or any affiliate of the Borrower) authorized to do business in and qualified to practice in the areas required to provide the services required of the Technical and Rate Consultant, that together have expertise in the technical requirements for operation and maintenance of systems similar in size and scope to the System and delivering the services provided by the System, and establishing rates and charges for governmental water or wastewater systems similar in size and scope to the System.

“Total Project Costs” means (a) the costs paid or incurred or to be paid or incurred by the Borrower in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance and financing (including costs of issuance); (b) amounts, if any, required by the WIFIA Loan Documents or any other Obligation Document to be paid into any fund or account upon the incurrence of the WIFIA Loan or any other Obligation, in each case in respect of the Project; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon prepayment) in respect of any indebtedness of the Borrower, in each case in connection with the Project (other than the WIFIA Loan); and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower.

“Uncontrollable Force” means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or

body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code, as in effect from time to time in the State.

“**Variable Interest Rate Parity Obligations**” means Parity Obligations which bear a variable interest rate during any period of time but does not include any Parity Obligations for which the interest rate has been fixed during the entirety of the term thereof.

“**Waiver Agreement**” means that certain Waiver and Consent Agreement, dated as of June 30, 2020, by and between the Borrower and BMO Harris Bank, N.A.

“**Water Utility Portion**” means the Eligible Project Costs labeled “Water Supply” in the Project Budget.

“**WIFIA**” has the meaning provided in the recitals hereto.

“**WIFIA Bond**” means the bond issued and delivered by the Borrower in substantially the form of **Exhibit A** (*Form of WIFIA Bond*).

“**WIFIA Debt Service**” means with respect to any Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the Outstanding WIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), in each case, (a) as set forth on **Exhibit F** (*WIFIA Debt Service*) and (b) due and payable on such Payment Date in accordance with the provisions of Section 8(a) (*Payment of Principal and Interest – Payment of WIFIA Debt Service*).

“**WIFIA Interest Rate**” has the meaning provided in Section 6 (*Interest Rate*).

“**WIFIA Lender**” has the meaning provided in the preamble hereto.

“**WIFIA Lender’s Authorized Representative**” means the Administrator and any other Person who shall be designated as such pursuant to Section 22 (*WIFIA Lender’s Authorized Representative*).

“**WIFIA Loan**” means the secured loan made by the WIFIA Lender to the Borrower on the terms and conditions set forth herein, pursuant to the Act, in a principal amount not to exceed \$137,100,000, to be used in respect of Eligible Project Costs in connection with the Water Utility Portion of the Project.

“**WIFIA Loan Documents**” means this Agreement, the WIFIA Bond and the WIFIA Resolution.

“WIFIA Resolution” means the Resolution Authorizing the Issuance and Sale of Up To \$137,100,000 Waterworks System Revenue Bond, and Providing for Other Details and Covenants With Respect Thereto, adopted by the Common Council of the Borrower on July 21, 2020.

Section 2. Interpretation.

(a) Unless the context shall otherwise require, the words “hereto,” “herein,” “hereof” and other words of similar import refer to this Agreement as a whole.

(b) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa.

(c) Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require.

(d) The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

(e) Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns.

(f) Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement.

(g) The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement.

(h) The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions.

(i) Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof.

(j) Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 31 (*Notices*) and signed by a duly authorized representative of such party.

(k) References to “disbursements of WIFIA Loan proceeds” or similar phrasing shall be construed as meaning the same thing as “paying the purchase price of the WIFIA Bond”.

(l) Whenever this Agreement requires a change in principal amount, interest rate or amortization schedule of the WIFIA Loan, it is intended that such change be reflected in the WIFIA Bond. Whenever there is a prepayment of the WIFIA Loan, it is intended that such prepayment be implemented through a prepayment of the WIFIA Bond.

ARTICLE II THE WIFIA LOAN

Section 3. WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed \$137,100,000. WIFIA Loan proceeds available to be drawn shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions; Approval of Requisition*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*).

Section 4. Disbursement Conditions; Approval of Requisition.

(a) WIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred and approved for payment by or on behalf of the Borrower in connection with the Water Utility Portion of the Project. If the Borrower intends to utilize the WIFIA Loan proceeds to make progress payments for Project construction work, the Borrower shall demonstrate to the satisfaction of the WIFIA Lender that such progress payments are commensurate with the cost of the work that has been completed. Each disbursement of the WIFIA Loan shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in **Appendix One** (*Form of Requisition*) to **Exhibit D** (*Requisition Procedures and Form of Requisition*), along with all documentation and other information required thereby, submitted by the Borrower to, and approved by, the WIFIA Lender, all in accordance with the procedures of **Exhibit D** (*Requisition Procedures and Form of Requisition*) and subject to the requirements of this Section 4 and the conditions set forth in Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*); provided that no disbursements of WIFIA Loan proceeds shall be made after the Final Disbursement Date.

(b) Each Requisition shall include a certification by the Borrower certifying that the amount for which reimbursement or payment is being requested has not been reimbursed or paid by any previous disbursement of WIFIA Loan proceeds.

(c) The Borrower shall deliver copies of each Requisition to the WIFIA Lender and the Servicer (if any) on or before the first (1st) Business Day of each month for which a disbursement is requested. If the WIFIA Lender shall expressly approve a Requisition or shall not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15th) day is not a Business Day. Express WIFIA Lender approval or denial shall be substantially in the form annexed hereto as **Appendix Two** (*[Approval/Disapproval] of the WIFIA Lender*) to **Exhibit D** (*Requisition Procedures and Form of Requisition*). In no event shall disbursements be made more than once each month.

(d) At the time of any disbursement, the sum of all prior disbursements of WIFIA Loan proceeds and the disbursement then to be made shall not exceed the cumulative disbursements through the end of the then-current Federal Fiscal Year set forth in the Anticipated WIFIA Loan Disbursement Schedule, as the same may be amended from time to time in accordance with the terms of this Agreement, and the then applicable Annual Maximum Disbursement Certificate. Subject to this Section 4, any scheduled disbursement (as reflected in the Anticipated WIFIA Loan Disbursement Schedule) that remains undrawn at the end of any Federal Fiscal Year shall automatically roll forward to be available in the next succeeding Federal Fiscal Year up to the last anticipated date of disbursement set forth in the Anticipated WIFIA Loan Disbursement Schedule, having the effect of automatically updating the Anticipated WIFIA Loan Disbursement Schedule without need for the WIFIA Lender's approval. The Borrower may also amend the Anticipated WIFIA Loan Disbursement Schedule by submitting a revised version thereof to the WIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions. Such revised Anticipated WIFIA Loan Disbursement Schedule shall become effective upon the WIFIA Lender's approval thereof, which approval shall be granted in the WIFIA Lender's sole discretion.

Section 5. Term. The term of the WIFIA Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the WIFIA Lender hereunder have been irrevocably paid in full in immediately available funds.

Section 6. Interest Rate. The interest rate with respect to the Outstanding WIFIA Loan Balance (the "**WIFIA Interest Rate**") shall be one and sixteen hundredths percent (1.16%) per annum. Interest will accrue and be computed on the Outstanding WIFIA Loan Balance from time to time on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months; provided that, upon the occurrence of (a) any Payment Default, the Borrower shall pay interest on the Outstanding WIFIA Loan Balance at the Default Rate from (and including) its due date to (but excluding) the date of actual payment and (b) any Event of Default other than pursuant to Section 17(a)(i) (*Events of Default and Remedies – Payment Default*), the Borrower shall pay interest on the Outstanding WIFIA Loan Balance at the Default Rate from (and including) the date of such occurrence to (but excluding) the earlier of the date on which (i) such Event of Default has been cured or waived (if applicable) in accordance with the terms of this Agreement and (ii) the Outstanding WIFIA Loan Balance has been irrevocably paid in full in immediately available funds. For the avoidance of doubt, interest on the WIFIA Loan shall accrue and be payable only on those amounts for which a Requisition has been submitted and funds (or such portion of funds as have been approved by the WIFIA Lender) have been disbursed to the Borrower for use on the Project in accordance with Section 4 (*Disbursement Conditions; Approval of Requisition*).

Section 7. Security and Priority; Flow of Funds.

(a) As security for the WIFIA Loan, and concurrently with the issuance and delivery of this Agreement, the Borrower hereby irrevocably pledges, assigns and grants to the WIFIA Lender for its benefit, Liens on the Net Revenues and has delivered to the WIFIA Lender, as the registered owner, the WIFIA Bond. The Liens securing the obligations under the WIFIA Loan Documents shall be (i) *pari passu* in right of payment and right of security with the Liens securing all other Parity Obligations and (ii) senior in right of payment and right of security to the

Liens securing all Subordinate Obligations. The obligations of the Borrower to pay WIFIA Debt Service under this Agreement and the WIFIA Bond constitute Parity Obligations.

(b) Except for Permitted Liens, the Net Revenues will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto, that is of equal rank with the pledge of the Borrower created under the WIFIA Loan Documents for the benefit of the WIFIA Lender. Except for Permitted Liens (other than clause (a) thereof), the Net Revenues will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto, that is senior to the pledge of the Borrower created under the WIFIA Loan Documents for the benefit of the WIFIA Lender. All organizational, regulatory or other necessary action on the part of the Borrower with respect to the foregoing has been duly and validly taken.

(c) The Borrower shall not use the Gross Earnings to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 7 and the Obligation Documents and shall not apply any portion of the Gross Earnings in contravention of this Agreement or the other Obligation Documents.

(d) All Gross Earnings shall, immediately upon receipt thereof, be deposited by the Borrower into the Revenue Fund. Amounts deposited in the Revenue Fund shall be applied in the order of priority described, and in accordance with the Flow of Funds.

Section 8. Payment of Principal and Interest.

(a) Payment of WIFIA Debt Service.

(i) On each Payment Date occurring on or after the Debt Service Payment Commencement Date, the Borrower shall pay WIFIA Debt Service by making (A) semi-annual payments of interest, on each Interest Payment Date, (B) annual payments of principal, on each Principal Payment Date, and (C) payments of any other amounts on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date and any other date on which such payment is due hereunder or under the WIFIA Bond); provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Payments of WIFIA Debt Service shall be made in the amounts and on the Payment Dates as set forth in **Exhibit F** (*WIFIA Debt Service*), as the same may be revised pursuant to Section 8(e) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*). Each principal payment shall equal the product of the aggregate amount of all disbursements of the WIFIA Loan as of the final Interest Payment Date during the Interest Only Period multiplied by the percentage set forth for such corresponding Principal Payment Date in **Exhibit F** (*WIFIA Debt Service*) and shall be calculated by the WIFIA Lender in such manner that the Outstanding WIFIA Loan Balance is reduced to \$0 on the Final Maturity Date.

(ii) Notwithstanding anything herein to the contrary, the Outstanding WIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the earlier of the Final Maturity Date and, to the extent applicable, the date the WIFIA Loan is accelerated pursuant to Section 17(d) (*Events of Defaults and Remedies*).

(b) Interest Payments and Interest Only Period.

(i) Interest shall accrue on the WIFIA Loan commencing on the Initial Disbursement Date and shall be payable commencing on the Debt Service Payment Commencement Date.

(ii) During the Interest Only Period, the WIFIA Debt Service payable by the Borrower shall consist of one hundred percent (100%) of the amount of interest then due and payable on the Outstanding WIFIA Loan Balance, and no payment of principal will be due and payable.

(c) WIFIA Bond. As evidence of the Borrower's obligation to repay the WIFIA Loan, the Borrower shall issue and deliver to the WIFIA Lender, on or prior to the Effective Date, the WIFIA Bond substantially in the form of **Exhibit A** (*Form of WIFIA Bond*), having a maximum principal amount of \$137,100,000, bearing interest at the WIFIA Interest Rate and having principal and interest payable on the same dates set forth herein. Any payment in respect of the WIFIA Bond shall be treated as a payment in respect of the WIFIA Loan and any prepayment of principal in respect of the WIFIA Loan shall be treated as a redemption in respect of the WIFIA Bond.

(d) Manner of Payment. Payments under this Agreement (and the WIFIA Bond, which payments shall not be duplicative) shall be made by wire transfer on or before each Payment Date in Dollars and in immediately available funds (without counterclaim, offset or deduction) in accordance with the payment instructions set forth in **Schedule IV** (*WIFIA Payment Instructions*), as may be modified in writing from time to time by the WIFIA Lender. The Borrower shall make any such payment with funds then on deposit in the Parity Principal and Interest Account.

(e) Adjustments to Loan Amortization Schedule.

(i) The Outstanding WIFIA Loan Balance will be (A) increased on each occasion on which the WIFIA Lender disburses WIFIA Loan proceeds hereunder, by the amount of such disbursement of loan proceeds, and (B) decreased upon each payment or prepayment of the Outstanding WIFIA Loan Balance, by the amount of principal so paid. The WIFIA Lender may in its discretion at any time and from time to time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding WIFIA Loan Balance as of the date of such notice. The WIFIA Lender's determination of such amount in any such notice shall be deemed conclusive absent manifest error. Amounts borrowed and repaid may not be reborrowed.

(ii) The WIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit F** (*WIFIA Debt Service*) from time to time, in accordance with the principles set forth below in this Section 8(e), to reflect (A) any change to the Outstanding WIFIA Loan Balance, (B) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (C) such other information as the WIFIA Lender may determine is necessary for administering the WIFIA Loan and this Agreement. Any calculations described above shall be rounded up to the nearest whole cent. Any adjustments or revisions to the Loan Amortization Schedule as a result of changes in the Outstanding WIFIA Loan Balance shall be applied to reduce future payments due with respect to the

WIFIA Loan in inverse order of maturity, other than prepayments which shall be applied in accordance with Section 9(c) (*Prepayment – General Prepayment Instructions*). Absent manifest error, the WIFIA Lender's determination of such matters as set forth on **Exhibit F** (*WIFIA Debt Service*) shall be conclusive evidence thereof; provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. The WIFIA Lender shall provide the Borrower with a copy of **Exhibit F** (*WIFIA Debt Service*) as revised pursuant to this Section 8(e)(ii), but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents.

Section 9. Prepayment.

(a) The Borrower may prepay the WIFIA Loan in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided that such prepayments shall be in principal amounts of \$1,000,000 or any integral multiple of \$1.00 in excess thereof), from time to time, but not more than annually, without penalty or premium, by paying to the WIFIA Lender such principal amount of the WIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment, which shall be a Payment Date unless otherwise agreed by the WIFIA Lender. Each prepayment of the WIFIA Loan pursuant to this Section 9(a) shall be made on such Payment Date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the WIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the WIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the WIFIA Lender. Anything in this Section 9(a) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(b) Borrower's Certificate. Each prepayment pursuant to this Section 9 shall be accompanied by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(c) General Prepayment Instructions. Upon the WIFIA Lender's receipt of confirmation that payment in full in immediately available funds of the entire Outstanding WIFIA Loan Balance and any unpaid interest, fees and expenses with respect thereto has occurred as a result of a prepayment, the WIFIA Lender shall surrender the WIFIA Bond to the Borrower or its representative at the principal office of the WIFIA Lender. If the Borrower prepays only part of the unpaid balance of principal of the WIFIA Loan, the WIFIA Lender may make a notation on **Exhibit F** (*WIFIA Debt Service*) indicating the amount of principal of and interest on the WIFIA Loan then being prepaid. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on **Exhibit F** (*WIFIA Debt Service*) shall be conclusive evidence thereof; provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. All partial prepayments of principal shall be applied to reduce future payments due on the WIFIA Loan in inverse order of maturity. If such funds have not been so paid on the

prepayment date, such principal amount of the WIFIA Loan shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*).

Section 10. Fees and Expenses.

(a) Fees. The Borrower shall pay to the WIFIA Lender:

(i) a servicing set-up fee equal to \$15,610 (the “**Servicing Set-Up Fee**”), which shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the Initial Disbursement Date);

(ii) an annual construction period servicing fee equal to \$15,610 (the “**Construction Period Servicing Fee**”), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15 during the Construction Period (including the Federal Fiscal Year during which the Substantial Completion Date occurs); provided that the initial Construction Period Servicing Fee shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the Initial Disbursement Date), in a pro-rated amount equal to \$1,300; and

(iii) an annual operating period servicing fee equal to \$7,810 (the “**Operating Period Servicing Fee**”), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15, beginning with the first November 15 following the end of the Federal Fiscal Year during which the Substantial Completion Date occurs, until (and including) the Final Maturity Date; provided that the Operating Period Servicing Fee due and payable with respect to the Federal Fiscal Year during which the Final Maturity Date occurs shall be equal to the pro-rata monthly portion of the then applicable Operating Period Servicing Fee multiplied by the number of partial or whole months remaining between October 1 and the Final Maturity Date.

(b) The amount of each Construction Period Servicing Fee (other than the initial Construction Period Servicing Fee) and each Operating Period Servicing Fee shall be adjusted in proportion to the percentage change in CPI for the calendar year immediately preceding the calendar year during which such fee is due. The WIFIA Lender shall notify the Borrower of the amount of each such fee at least thirty (30) days before payment is due, which determination shall be conclusive absent manifest error.

(c) Expenses. The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the WIFIA Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the WIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the fees, costs, and expenses of its legal counsel, financial advisors, auditors and other consultants and advisors) in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other WIFIA Loan Documents and the transactions hereby and thereby contemplated, including attorneys’, and engineers’ fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with: (i) the enforcement of or attempt to enforce, or the

protection or preservation of any right or claim under, the Liens on the Net Revenues, or any provision of this Agreement or any of the other WIFIA Loan Documents or the rights of the WIFIA Lender thereunder; (ii) any amendment, modification, waiver, or consent with respect to this Agreement or any other Related Document; and (iii) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents, including during the pendency of any Event of Default.

(d) The obligations of the Borrower under this Section 10 shall survive the payment or prepayment in full or transfer of the WIFIA Loan, the enforcement of any provision of this Agreement or the other WIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

ARTICLE III CONDITIONS PRECEDENT

Section 11. Conditions Precedent.

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Lender in its sole discretion:

(i) The Borrower shall have duly executed and delivered to the WIFIA Lender this Agreement and each other WIFIA Loan Document, each in form and substance satisfactory to the WIFIA Lender.

(ii) The Borrower shall have delivered to the WIFIA Lender complete and fully executed copies of each Obligation Document (other than the WIFIA Loan Documents), together with any amendments, supplements, waivers or modifications thereto, that has been entered into on or prior to the Effective Date, along with a certification in the Closing Certificate that each such document is complete, fully executed and in full force and effect, and that all conditions contained in such documents that are necessary to the closing of the WIFIA transactions contemplated hereby have been fulfilled.

(iii) The Borrower shall have delivered to the WIFIA Lender a copy of its Organizational Documents, as in effect on the Effective Date, along with a certification in the Closing Certificate that such Organizational Documents are in full force and effect.

(iv) The Borrower shall have delivered to the WIFIA Lender all further instruments and documents (including any resolutions, ordinances, and supplements) other than the Related Documents as are necessary for the Borrower to execute and deliver, and to perform its obligations under, the WIFIA Loan Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Loan Documents.

(v) Counsel to the Borrower shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those

opinions set forth in **Exhibit G-1** (*Opinions Required from Counsel to Borrower on Effective Date*)) and bond counsel to the Borrower shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth in **Exhibit G-2** (*Opinions Required from Bond Counsel on Effective Date*)).

(vi) The Borrower shall have delivered to the WIFIA Lender the Non-Debarment Certificate.

(vii) The Borrower shall have delivered to the WIFIA Lender the Non-Lobbying Certificate.

(viii) The Borrower shall have delivered to the WIFIA Lender a certificate, signed by the Borrower's Authorized Representative, substantially in the form attached hereto as **Exhibit H** (*Form of Closing Certificate*) (the "**Closing Certificate**"), designating the Borrower's Authorized Representative, confirming such person's position and incumbency, and certifying as to the satisfaction of the following conditions precedent (and, if requested by the WIFIA Lender, has provided evidence satisfactory to the WIFIA Lender of such compliance):

(A) the aggregate of all funds committed to the development and construction of the Project as set forth in the Base Case Financial Model and in the Project Budget are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date;

(B) the Borrower has obtained all Governmental Approvals necessary (x) as of the Effective Date in connection with the Project and (y) to execute and deliver, and perform its obligations under the WIFIA Loan Documents, and all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);

(C) as of the Effective Date, (x) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (y) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs;

(D) the Borrower is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project;

(E) the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project during its useful life;

(F) the Borrower has (x) obtained a Federal Employer Identification Number, (y) obtained a Data Universal Numbering System number, and (z) registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov);

(G) the representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and

(H) no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since November 18, 2019.

(ix) The Borrower shall have provided evidence to the WIFIA Lender's satisfaction of the assignment by at least two (2) Nationally Recognized Rating Agencies of a public Investment Grade Rating to the WIFIA Loan, which evidence shall acknowledge the existence of any Outstanding Parity Obligations (including any Parity Obligations with the State's Department of Natural Resources), along with a certification in the Closing Certificate that such rating has not been reduced to a rating which is not an Investment Grade Rating, withdrawn or suspended as of the Effective Date.

(x) The Borrower shall have delivered to the WIFIA Lender a Base Case Financial Model in form and substance acceptable to the WIFIA Lender, along with a certification in the Closing Certificate that such Base Case Financial Model (A) demonstrates that projected Gross Earnings are sufficient to meet the Loan Amortization Schedule, (B) demonstrates compliance with the Rate Covenant for each Borrower Fiscal Year through the Final Maturity Date, (C) reflects principal amortization and interest payment schedules acceptable to the WIFIA Lender and (D) demonstrates that the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over the useful life of the Project.

(xi) The Borrower shall have delivered to the WIFIA Lender (A) certificates of liability insurance along with a certification in the Closing Certificate that such insurance certificates are true and correct and demonstrate compliance with the requirements of Section 14(f) (*Affirmative Covenants – Insurance; Loss Proceeds*) (provided that in the case of Contract Package No. 4, the applicable certificate of liability insurance may be delivered within sixty (60) days after the Effective Date), and (B) at the WIFIA Lender's request, copies of such insurance policies and/or, if applicable, documents pertaining to the Borrower's self-insurance program.

(xii) The Borrower shall have delivered to the WIFIA Lender the Public Benefits Report.

(xiii) The Borrower shall have paid in full all invoices delivered by the WIFIA Lender to the Borrower as of the Effective Date for the fees and expenses of the WIFIA Lender's counsel and financial advisors and any auditors or other consultants retained by the WIFIA Lender for the purposes hereof.

(xiv) The Borrower shall have provided evidence to the WIFIA Lender's satisfaction of the establishment by the Borrower of the Parity Principal and Interest Account and the Subordinate Principal and Interest Account.

(xv) The Borrower shall have delivered to the WIFIA Lender a complete and fully executed copy of the Waiver Agreement in form and substance satisfactory to the WIFIA Lender.

(xvi) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the WIFIA Lender, all in form and substance satisfactory to the WIFIA Lender.

(b) Conditions Precedent to Disbursements. Notwithstanding anything in this Agreement to the contrary, the WIFIA Lender shall have no obligation to make any disbursement of WIFIA Loan proceeds to the Borrower (including the initial disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Lender in its sole discretion:

(i) The Borrower shall have certified to the WIFIA Lender that (A) the aggregate amount of all disbursements of the WIFIA Loan (including the requested disbursement) will not exceed (1) the maximum principal amount of the WIFIA Loan, (2) the amount of Eligible Project Costs paid or incurred by the Borrower in connection with the Water Utility Portion of the Project or (3) the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated WIFIA Loan Disbursement Schedule; (B) the Borrower has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under the WIFIA Loan, will be sufficient to pay the reasonably anticipated remaining Total Project Costs; and (C) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs.

(ii) (A) The Borrower shall have provided to the WIFIA Lender a certificate executed by the Borrower's Authorized Representative (1) setting forth, for the then current Federal Fiscal Year, the maximum amount that may be disbursed under the WIFIA Loan for such Federal Fiscal Year and (2) evidencing that the Borrower satisfies the requirements for the issuance of additional Parity Obligations under the Obligation Documents in such amount (such certificate, the "**Annual Maximum Disbursement Certificate**"); and (B) bond counsel to the Borrower shall have delivered to the WIFIA Lender the legal opinions and reliance letter in the form set forth on **Exhibit G-3** (*Opinions and Reliance Letter Required from Bond Counsel in Connection with Disbursement*), in each case, with respect to the applicable disbursement. The documents described in this Section 11(b)(ii) may satisfy the requirements for multiple disbursements, which in the

aggregate, equal the amount set forth on the applicable Annual Maximum Disbursement Certificate.

(iii) The Borrower shall have provided the Annual Budget or financial plan in each case for the then current Borrower Fiscal Year in compliance with the requirements of Section 16(a) (*Reporting Requirements – Annual Budget; Financial Plan*).

(iv) The Borrower shall have delivered to the WIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions; Approval of Requisition*) (including satisfactory Eligible Project Costs Documentation relating to such Requisition), and the WIFIA Lender shall have approved (or be deemed to have approved in accordance with Section 4(c) (*Disbursement Conditions; Approval of Requisition*)) such Requisition. The Borrower's Authorized Representative shall also certify in such Requisition that:

(A) all Governmental Approvals necessary as of the time of such disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect (and are not subject to any notice of violation, breach or revocation);

(B) each of the insurance policies obtained by the Borrower and by any applicable Construction Contractor in satisfaction of the requirements of Section 14(f) (*Affirmative Covenants – Insurance; Loss Proceeds*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider;

(C) at the time of, and immediately after giving effect to, any disbursement of WIFIA Loan proceeds then currently requested, (1) no Default or Event of Default hereunder and no event of default under any other Related Document shall have occurred and be continuing and (2) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any other Related Document shall have occurred and be continuing;

(D) no Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred since November 18, 2019;

(E) the Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Lender; and

(F) the representations and warranties of the Borrower set forth in this Agreement (including Section 12 (*Representations and Warranties of*

Borrower)) and in each other Related Document shall be true and correct as of each date on which any disbursement of the WIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(v) To the extent not previously delivered to the WIFIA Lender, the Borrower shall have delivered to the WIFIA Lender copies of any Obligation Documents (including any amendment, waiver, modification or supplement thereto) entered into after the Effective Date, along with a certification in the Requisition that each such document is complete, fully executed and in full force and effect.

(vi) The Borrower shall have paid in full (A) any outstanding Servicing Fees due and payable under Section 10 (*Fees and Expenses*) and (B) all invoices received from the WIFIA Lender as of the date of disbursement of the WIFIA Loan and delivered by the WIFIA Lender to the Borrower, for the fees and expenses of the WIFIA Lender's counsel and financial advisors and any auditors or other consultants retained by the WIFIA Lender for the purposes hereof.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 12. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 12(b) (*Representations and Warranties of Borrower – Officers' Authorization*), the first sentence of Section 12(f) (*Representations and Warranties of Borrower – Litigation*), Section 12(k) (*Representations and Warranties of Borrower – Credit Ratings*) and Section 12(n) (*Representations and Warranties of Borrower – Construction Contracts*), as of each date on which any disbursement of the WIFIA Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a municipality organized under the laws of the State, has full legal right, power and authority to do business in the State and to enter into the Related Documents then in existence, to execute and deliver this Agreement and the other WIFIA Loan Documents, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of this Agreement, the WIFIA Bond, and the other Related Documents.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents, and any certifications or instruments related thereto, to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency,

reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated by the Related Documents, and the fulfillment of or compliance with the terms and conditions of all of the Related Documents, will not (i) conflict with the Borrower's Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, other than Permitted Liens.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by any of the Related Documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of any of the Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. There is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the System, the Project or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the System, the Project, the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. Pursuant to the terms hereof, as security for the WIFIA Loan, and concurrently with the issuance and delivery of this Agreement and the issuance of the WIFIA Bond, the Borrower has irrevocably pledged, assigned and granted to the WIFIA Lender for its benefit, Liens on the Net Revenues and has delivered to the WIFIA Lender, as the registered

owner, the WIFIA Bond. The Liens securing the obligations under this Agreement and the WIFIA Bond are (i) *pari passu* in right of payment and right of security with the Liens securing all other Parity Obligations and (ii) senior in right of payment and right of security to the Liens securing all Subordinate Indebtedness. The obligations of the Borrower to pay WIFIA Debt Service under this Agreement and the WIFIA Bond constitute Parity Obligations. Neither the attachment, validity, enforceability or priority of the Liens on the Net Revenues granted pursuant to the terms hereof is governed by Article 9 of the UCC.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. § 1532.995) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 11(a)(vi) (*Conditions Precedent – Conditions Precedent to Effectiveness*).

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related Documents are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Compliance with Laws.

(i) The Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§ 3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. § 3914 (relating to American iron and steel products).

(ii) To ensure such compliance, the Borrower has included in all contracts with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 12(j) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 12(j) (including with respect to the Davis-Bacon Act requirements).

(iii) No notices of violation of any applicable law have been issued, entered or received by the Borrower or, to the Borrower's knowledge and solely with respect to the Project, any contractor or subcontractor with respect to the Project, other than, in each case, notices of violations that are immaterial.

(iv) The Borrower is not (A) a Sanctioned Person or (B) in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (1) any

applicable Anti-Money Laundering Laws; (2) any applicable Sanctions; (3) any applicable Anti-Corruption Laws; or (4) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal. There are no pending or, to the knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any anti-drug trafficking or anti-terrorism laws. No use of proceeds of the WIFIA Loan or any other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(k) Credit Ratings. (i) The WIFIA Loan has received a public Investment Grade Rating from at least two (2) Nationally Recognized Rating Agencies, (ii) written evidence of such rating, which evidence shall acknowledge the existence of any Outstanding Parity Obligations (including any Parity Obligations with the State's Department of Natural Resources), has been provided to the WIFIA Lender prior to the Effective Date, and (iii) such rating has not been reduced to a rating which is not an Investment Grade Rating, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no default or event of default by the Borrower under any other Related Document, has occurred and is continuing.

(m) Governmental Approvals. All Governmental Approvals required as of the Effective Date and required as of any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the Borrower of the Project, and for the operation and management thereof, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(n) Construction Contracts. Attached as **Schedule 12(n)** (*Construction Contracts*) is a list of the Existing Construction Contracts and all Additional Construction Contracts that are expected to be entered into.

(o) Information. The information furnished by, or on behalf of, the Borrower to the WIFIA Lender, when taken as a whole, is true and correct in all material respects (other than for projections and other forward-looking statements contained in the Base Case Financial Model and the Annual Budget or financial plan delivered pursuant to Section 16(a) (*Reporting Requirements – Annual Budget; Financial Plan*) which have been made in good faith and based on reasonable assumptions) and does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished.

(p) Environmental Matters. The Borrower is in compliance with all laws applicable to the System (including the Project) relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental,

health or safety matters, including all laws applicable to the System (including the Project) (collectively, the “**Environmental Laws**”). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The Borrower has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower’s knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrower with any such Environmental Law or Governmental Approval. The Borrower has provided to the WIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower regarding the Borrower’s or the Project’s compliance with (A) Environmental Laws and (B) Governmental Approvals that are required for the Project and relate to Environmental Laws.

(q) Sufficient Rights. The Borrower possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the System (including the Project), in each case as is necessary and sufficient as of the date this representation is made for the construction, operation, maintenance and repair of the System (including the Project). As of any date on which this representation and warranty is made, the Construction Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in the Borrower sufficient to enable the Borrower to own, construct, operate, maintain and repair the System (including the Project) and to perform its obligations under the Construction Contracts.

(r) Insurance. The Borrower is in compliance with all insurance obligations required under the Related Documents as of the date on which this representation and warranty is made. To the extent the Borrower self-insures, the Borrower’s self-insurance program is actuarially sound and the Borrower has received an opinion from an accredited actuary within the last twelve (12) months, which opinion confirms that the Borrower’s self-insurance program is actuarially sound.

(s) No Liens. Except for Permitted Liens, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Net Revenues, the System, the Project, the Gross Earnings, the properties or assets in relation to the Project, or the Borrower’s respective rights in any of the foregoing.

(t) Financial Statements. Each income statement, balance sheet and statement of operations and cash flows (collectively, “**Financial Statements**”) delivered to the WIFIA Lender pursuant to Section 16(b) (*Reporting Requirements – Annual Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the periods to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

(u) Securities Laws. Under existing law, the WIFIA Bond may be issued and sold without registration under the Securities Act of 1933, as amended, and any State blue sky laws, and the WIFIA Resolution is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

(v) Taxes. The Borrower has (i) filed all tax returns required by applicable laws to be filed by it and (ii) paid all taxes payable by it that have become due pursuant to such tax returns and all other material taxes and assessments payable by it that have become due (other than those taxes that it is contesting in good faith and by appropriate proceedings, for which adequate reserves have been established to the extent required by GAAP).

(w) Sufficient Funds. The amount of the WIFIA Loan, when combined with all other funds committed for the development and construction of the Project as set forth under the various sources of funds in the Base Case Financial Model and the Project Budget will be sufficient to carry out the Project, pay all Total Project Costs anticipated for the development and construction of the Project and achieve Substantial Completion by the Projected Substantial Completion Date.

(x) Sovereign Immunity. The Borrower either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the Borrower under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the Borrower hereunder and thereunder, or, to the extent that the Borrower has such immunity, the Borrower has waived such immunity to the extent permitted by law pursuant to Section 14(m) (*Affirmative Covenants – Immunity*).

(y) Patriot Act. The Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

(z) No Federal Debt. The Borrower has no delinquent federal debt (including tax liabilities but excluding any delinquencies that have been resolved with the appropriate federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996).

Section 13. Representations and Warranties of WIFIA Lender. The WIFIA Lender represents and warrants that:

(a) Power and Authority. The WIFIA Lender has all requisite power and authority to make the WIFIA Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the WIFIA Lender, and are legally valid and binding agreements of the WIFIA Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the WIFIA Lender executing each of the Related Documents to which the WIFIA Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the WIFIA Lender.

ARTICLE V COVENANTS

Section 14. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the WIFIA Bond and all of the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds and the WIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the WIFIA Lender waives compliance in writing:

(a) Rate Covenant.

(i) The Net Revenues shall be equal to not less than the annual principal and interest requirements on the outstanding Obligations (exclusive, for the 2018 BAN, of principal to be paid with proceeds of bonds) multiplied by the greater of (A) one hundred ten percent (110%) and (B) the highest debt service coverage ratio required with respect to any Obligations then outstanding.

(ii) The Borrower agrees that, if Net Revenues are insufficient to meet annual debt service requirements, the Borrower shall either (x) increase its rates and charges of the System, subject to approval of such increase by the Wisconsin Public Service Commission or (y) purchase water services in each case in amounts sufficient to meet such annual debt service requirements. The reasonable cost and value of services rendered to the Borrower by the System by furnishing waterworks services for public purposes shall be charged against the Borrower and shall be paid in monthly installments as the service accrues, out of the current revenues of the Borrower collected or in the process of collection, exclusive of the revenues derived from the System; that is to say, out of the tax levy of the Borrower made by it to raise money to meet its necessary current expenses. The reasonable cost and value of such service to the Borrower in each Borrower Fiscal Year shall be equal to an amount which, together with other revenues of the System, will produce in each Borrower Fiscal Year Net Revenues equivalent to not less than the annual principal and interest requirements on the outstanding Obligations (provided that in the case of the 2018 BAN such requirements shall be exclusive of principal to be paid with proceeds of Obligations) multiplied by the greater of (A) one hundred ten percent (110%) and (B) the highest debt service coverage ratio required with respect to any Obligations then outstanding. However, such payment out of the tax levy shall be subject to (1) approval of the Wisconsin Public Service Commission, or successors to its function, if applicable, (2) yearly appropriations therefor and (3) applicable levy limitations, if any, and neither any WIFIA Loan Document nor such payment shall be construed as constituting an obligation of the Borrower to make any such appropriation over and above the reasonable cost and value of the services rendered to the Borrower and its inhabitants or to make any subsequent payment over and above such reasonable cost and value.

(iii) If the forecast furnished by the Borrower in the most recent Annual Budget or financial plan delivered by the Borrower pursuant to Section 16(a) (*Reporting Requirements – Annual Budget; Financial Plan*) demonstrates that projected Net Revenues may be inadequate to satisfy the Rate Covenant for any Borrower Fiscal Year until the Final Maturity Date, or if the Borrower fails to satisfy the Rate Covenant for the most

recently ended Borrower Fiscal Year, the Borrower shall (A) within thirty (30) days after request by the WIFIA Lender, engage the Technical and Rate Consultant to review and analyze the operations of the System and recommend actions regarding revising the rates or changing the methods of operations, or any other actions to increase the Net Revenues (as applicable) so as to satisfy the Rate Covenant, (B) cause the Technical and Rate Consultant to issue its report, including any such recommended actions, no later than ninety (90) days following such engagement, and (C) either, within thirty (30) days, (1) implement the Technical and Rate Consultant's recommendation or (2) undertake an alternative course of action after demonstrating to the WIFIA Lender's satisfaction that an alternative plan will generate an equivalent or greater increase to the Net Revenues so as to satisfy the Rate Covenant.

(b) Securing Liens. The Borrower shall at any and all times, to the extent permitted by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens on the Net Revenues (whether now existing or hereafter arising) granted to the WIFIA Lender for its benefit pursuant to the WIFIA Loan Documents, or intended so to be granted pursuant to the WIFIA Loan Documents, or which the Borrower may become bound to grant. The Borrower shall at all times maintain the Net Revenues free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the WIFIA Loan Documents, other than as permitted by this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Net Revenues granted pursuant to the WIFIA Loan Documents for the benefit of the WIFIA Lender against all claims and demands of all Persons whomsoever, subject to Permitted Liens.

(c) Use of Proceeds. The Borrower shall use the proceeds of the WIFIA Loan solely to pay Eligible Project Costs with respect to the Water Utility Portion of the Project as permitted by applicable law, this Agreement and the other Related Documents.

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, the Governmental Approvals in connection with the Project, and prudent utility practice.

(ii) The Borrower shall comply with Subpart C of 2 C.F.R. Part 180, as supplemented by Subpart C of 2 C.F.R. Part 1532 (relating to debarment), including the verification requirements set forth in 2 C.F.R. §§ 180.300 and 180.320, and shall include in its contracts with respect to the Project similar terms or requirements for compliance.

(e) Operations and Maintenance. The Borrower shall (i) operate and maintain the System (including the Project) (A) in a reasonable and prudent manner and (B) substantially in accordance with the most recent Annual Budget or financial plan delivered pursuant to Section 16(a) (*Reporting Requirements – Annual Budget; Financial Plan*) (except as necessary to prevent

or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material portions of the System (including the Project)) and (ii) maintain the System (including the Project) in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable Related Document. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business and the operation and maintenance of the Project.

(f) Insurance; Loss Proceeds.

(i) The Borrower agrees to maintain property and liability insurance for the System and the Project that is reasonable in amount and coverage and that is consistent with prudent municipal insurance practices for the term of the WIFIA Loan. The Borrower agrees to provide written evidence of insurance coverage to the WIFIA Lender upon request at any time during the term of the WIFIA Loan.

(ii) The Borrower shall cause all liability insurance policies that it maintains (and, during the Construction Period, that are maintained by any Construction Contractor), other than workers' compensation insurance, to reflect the WIFIA Lender as an additional insured to the extent of its insurable interest.

(iii) Promptly upon request by the WIFIA Lender, the Borrower shall deliver to the WIFIA Lender copies of any underlying insurance policies obtained by or on behalf of the Borrower in respect of the Project. All such policies shall be available at all reasonable times for inspection by the WIFIA Lender, its agents and representatives.

(iv) In the event the System or Project is damaged or destroyed, the Borrower agrees to use the proceeds from its insurance coverage either to repay the WIFIA Loan or to repair or replace the System.

(g) Maintain Legal Structure. The Borrower shall maintain its existence as a municipality organized and existing under its Organizational Documents and the laws of the State.

(h) Funds and Accounts; Permitted Investments.

(i) The Borrower shall maintain the Revenue Fund in accordance with the terms hereof and the other Obligation Documents. All Gross Earnings received shall be deposited into the Revenue Fund when and as received in trust for the benefit of the holders of the Obligations, subject to the application of Gross Earnings in accordance with the Flow of Funds.

(ii) Amounts on deposit in the Funds and Accounts shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder at such times as may be necessary to ensure that funds will be available within the applicable account to be applied towards the purpose for which the applicable account has been established.

(i) Compliance with Laws.

(i) The Borrower shall, and shall require its contractors and subcontractors at all tiers with respect to the Project, to comply with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products).

(ii) To ensure such compliance, the Borrower shall include in all contracts with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 14(i) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 14(i) (including with respect to the Davis-Bacon Act requirements).

(iii) No use of proceeds of the WIFIA Loan or any other transaction contemplated by this Agreement or any other Related Document shall violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(j) Material Obligations. The Borrower shall pay its material obligations payable from Gross Earnings promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the Gross Earnings or other assets of the System, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon the System or any part thereof or on the Gross Earnings or the Net Revenues; provided that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(k) SAM Registration. The Borrower shall (i) obtain prior to the Effective Date (and provide such registration information to the WIFIA Lender) and maintain through the Final Disbursement Date an active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date until the Final Disbursement Date, provide to the WIFIA Lender evidence of such active registration status with no active exclusions reflected in such registration.

(l) DUNS Number. The Borrower shall (i) obtain prior to the Effective Date (and provide such number to the WIFIA Lender) and maintain from Dun & Bradstreet (or a successor entity) a Data Universal Numbering System Number (a “**DUNS Number**”) and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the WIFIA Lender evidence of the continuing effectiveness of such DUNS Number, in each case until the Final

Maturity Date or to such earlier date as all amounts due or to become due to the WIFIA Lender under this Agreement have been irrevocably paid in full in immediately available funds.

(m) Immunity. To the fullest extent permitted by applicable law, the Borrower agrees that it will not assert any immunity (and hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of the Borrower under this Agreement or any other WIFIA Loan Document.

(n) Accounting and Audit Procedures.

(i) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all (A) Gross Earnings, operating expenses, capital expenses, depreciation, reserves, debt issued and outstanding and debt payments and (B) Project-related costs, WIFIA Loan requisitions submitted, WIFIA Loan proceeds received, payments made by the Borrower with regard to the Project, and other sources of funding for the Project (including amounts paid from such sources for Project costs so that audits may be performed to ensure compliance with and enforcement of this Agreement). The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the WIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts Outstanding.

(ii) The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 for 2020 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the WIFIA Lender, or designees thereof, pursuant to 40 C.F.R. Part 35, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the WIFIA Loan, to the WIFIA Lender, or the designee thereof, for any such project or programmatic audit.

(o) Access; Records.

(i) So long as the WIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after the WIFIA Loan shall have been paid in full, the WIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any portion of the Project, to examine books of account and records of the Borrower relating to the Project, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts relating to the Project with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the WIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 14(o) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and

intervals as the WIFIA Lender may request. The Borrower agrees to pay all out-of-pocket expenses incurred by the WIFIA Lender in connection with the WIFIA Lender's exercise of its rights under this Section 14(o) at any time when an Event of Default shall have occurred and be continuing.

(ii) The Borrower shall maintain and retain all files relating to the Project and the WIFIA Loan until five (5) years after the later of the date on which (A) all rights and duties under this Agreement and under the WIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (B) any litigation relating to the Project, the WIFIA Loan or this Agreement is finally resolved or, if the WIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the WIFIA Lender and the Borrower. The Borrower shall provide to the WIFIA Lender in a timely manner all records and documentation relating to the Project that the WIFIA Lender may reasonably request from time to time.

Section 15. Negative Covenants. The Borrower covenants and agrees as follows until the date the WIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds and the WIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the WIFIA Lender waives compliance in writing:

(a) Additional Indebtedness.

(i) The Borrower shall not create, incur or suffer to exist (A) any Obligations or other obligations the payments of which are senior or prior in right to (1) the payment by the Borrower of the WIFIA Loan and the other Parity Obligations or (2) the Lien on the Net Revenues in favor of the WIFIA Lender, (B) any obligations with respect to the Project (other than general obligations of the Borrower) that are secured by a Lien on any assets or property of the Borrower other than the Net Revenues, or (C) any Variable Interest Rate Parity Obligations.

(ii) Additional Parity Obligations may be issued only if all of the following conditions are met:

(A) the Net Revenues for the Borrower Fiscal Year immediately preceding the issuance of such Additional Parity Obligations shall have been in an amount at least equal to the maximum annual interest and principal requirements on all outstanding Obligations, and on the Additional Parity Obligations then to be issued, multiplied by the greater of (1) 1.10 and (2) the highest debt service coverage ratio to be required with respect to the Additional Parity Obligations to be issued or any outstanding Obligations. Should an increase in permanent rates and charges, including those made to the Borrower, be properly ordered and made effective during the Borrower Fiscal Year immediately prior to the issuance of such Additional Parity Obligations or during that part of the Borrower Fiscal Year of issuance prior to such issuance, then Net Revenues for purposes of such computation shall include such additional revenues as an independent certified public accountant, consulting professional engineer or the Wisconsin Public

Service Commission may certify would have accrued during the prior Borrower Fiscal Year had the new rates been in effect during that entire immediately prior Borrower Fiscal Year;

(B) the payments required to be made into the Flow of Funds shall have been made in full;

(C) the Additional Parity Obligations shall have principal maturing on May 1 of each year and interest falling due on May 1 and November 1 of each year; and

(D) the proceeds of the Additional Parity Obligations shall be used only for the purpose of providing extensions or improvements to the System, or to refund obligations issued for such purpose.

(b) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the WIFIA Lender, (i) extinguish or impair the Liens on the Net Revenues granted pursuant to this Agreement or any other WIFIA Loan Document, (ii) amend, modify, replace or supplement the WIFIA Resolution or permit a waiver of any provision thereof or of any other WIFIA Loan Document, (iii) amend, modify, replace or supplement any Related Document or permit a waiver of any provision thereof in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to result in a Material Adverse Effect or (iv) terminate, assign or replace any Related Document in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to have a Material Adverse Effect.

(c) No Prohibited Liens. Except for Permitted Liens, the Borrower shall not create, incur, assume or permit to exist any Lien on the Gross Earnings, the Net Revenues, the System, the Project, the properties or assets in relation to the Project, or the Borrower's respective rights in any of the foregoing.

(d) Restricted Payments and Transfers. The Borrower shall not permit Gross Earnings, or any funds in any of the Funds and Accounts or in any other fund or account with respect to any Obligation Document, to be paid or transferred or otherwise applied for purposes other than ownership, operation or maintenance of, or capital improvements to, the System, except with the prior consent of the WIFIA Lender, which consent shall be in the WIFIA Lender's sole discretion.

(e) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease or assign its rights in and to the System or a substantial portion of the assets included in the System in each case unless such sale, lease or assignment (i) could not reasonably be expected to have a Material Adverse Effect and (ii) is made by the Borrower in the ordinary course of business.

(f) Fiscal Year. The Borrower shall not at any time adopt any fiscal year other than the Borrower Fiscal Year, except to the extent permitted by law and with thirty (30) days' prior written notice to the WIFIA Lender.

(g) Mergers and Acquisitions. The Borrower shall not, and shall not agree to, reorganize, consolidate with or merge into another Person unless (i) such reorganization, merger or consolidation is with or into another entity established by State law and such reorganization, merger or consolidation is mandated by State law, and in each case, does not adversely affect or impair to any extent or in any manner (A) the Gross Earnings or the Net Revenues or (B) the availability of the Net Revenues for the payment and security of the obligations of the Borrower under this Agreement, and (ii) the Borrower provides to the WIFIA Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the WIFIA Lender. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the WIFIA Lender.

Section 16. Reporting Requirements.

(a) Annual Budget; Financial Plan.

(i) The Borrower shall provide to the WIFIA Lender not later than ninety (90) days after the beginning of each Borrower Fiscal Year (A) the Annual Budget or (B) a financial plan demonstrating to the satisfaction of the WIFIA Lender that the Borrower has developed and identified adequate revenues to implement a plan for operating, maintaining and repairing the Project over its useful life, and including (x) the Borrower's capital improvement plan, major maintenance plan, projected rates and charges, projected Gross Earnings and Current Expenses for a reasonable projection period consistent with the Borrower's operating and financial planning, and projected debt outstanding and annual debt service, and (y) evidence of compliance with the Rate Covenant for the most recent Borrower Fiscal Year and the projected Rate Covenant coverages through the Final Maturity Date.

(ii) The delivery by the Borrower of the Annual Budget or the financial plan to the WIFIA Lender pursuant to Section 16(a)(i) (*Reporting Requirements – Annual Budget; Financial Plan*) shall constitute a representation and warranty by the Borrower that such documents reflect the Borrower's reasonable expectations, using assumptions that the Borrower believes to be reasonable, of the System's expected operations, including capital costs, capital spending schedule, rates and charges, Gross Earnings, Current Expenses, major maintenance costs, financing structure and other scheduling, cost and financing elements.

(b) Annual Financial Statements. The Borrower shall deliver to the WIFIA Lender, as soon as available, but no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year:

(i) a copy of the audited income statement and balance sheet of the Borrower as of the end of such Borrower Fiscal Year and the related audited statements of operations and of cash flow of the Borrower for such Borrower Fiscal Year, (A) setting forth in each case in comparative form the figures for the previous fiscal year, (B) certified without qualification or exception, or qualification as to the scope of the audit, by an

independent public accounting firm selected by the Borrower and (C) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except, with respect to the annual financial statements, for changes approved or required by the independent public accountants certifying such statements and disclosed therein); and

(ii) together with each delivery of such annual audited financial statements, a certificate signed by the Borrower's Authorized Representative, stating whether or not, to the Borrower's knowledge, during the annual period covered by such financial statements, there occurred any Default or Event of Default and, if any such Default or Event of Default shall have occurred during such period, the nature of such Default or Event of Default and the actions that the Borrower has taken or intends to take in respect thereof.

(c) Construction Contracts and Specifications. The Borrower shall deliver to the WIFIA Lender, no later than thirty (30) days prior to (i) bid advertisement, a copy of the final specifications relating to the development and construction of the Project, (ii) execution of any Construction Contract, a copy of the final drafts of the contracting documents with respect thereto showing evidence of compliance with all applicable federal requirements, along with a summary of the scope of work thereunder and (iii) any notice to proceed for the Project, a copy of the executed Construction Contract related to such notice to proceed.

(d) Construction Reporting. The WIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development of the Project, including environmental compliance, design, and construction of the Project. The Borrower shall be responsible for administering construction oversight of the Project in accordance with applicable federal, state and local governmental requirements. The Borrower agrees to cooperate in good faith with the WIFIA Lender in the conduct of such monitoring by promptly providing the WIFIA Lender with any Construction Contracts and such reports, documentation or other information in each case as shall be requested by the WIFIA Lender or its agents, including any independent engineer reports, documentation or information. During the period through Substantial Completion of the Project, the Borrower shall furnish to the WIFIA Lender, on a quarterly basis, a report on the status of the Project, substantially in the form of **Exhibit J** (*Form of Quarterly Report*). The report shall be executed by the Borrower's Authorized Representative and, for any quarter, shall be delivered to the WIFIA Lender within thirty (30) days of the following quarter (or if such day is not a Business Day, on the next following Business Day). If the then-current projection for the Substantial Completion Date is a date later than the Projected Substantial Completion Date, the Borrower shall provide in such report a description in reasonable detail to the reasonable satisfaction of the WIFIA Lender of the reasons for such projected delay, an estimate of the impact of such delay on the capital and operating costs of the System (if any), and a certification of the Borrower's Authorized Representative that the new date could not reasonably be expected to result in a Material Adverse Effect.

(e) Public Benefits Report. The Borrower shall deliver to the WIFIA Lender a report, in the form of **Exhibit K** (*Form of Public Benefits Report*) (the "**Public Benefits Report**"), (i) on or prior to the Effective Date, (ii) within ninety (90) days following the Substantial

Completion Date and (iii) within ninety (90) days following the fifth (5th) anniversary of the Substantial Completion Date. The Borrower agrees that information described under this Section 16(e) may be made publicly available by the WIFIA Lender at its discretion.

(f) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide the WIFIA Lender with written notification at least thirty (30) days prior to instituting any increase to the aggregate Total Project Costs in an amount equal to or greater than ten percent (10%), which notification shall set forth the nature of the proposed increase and an estimate of the impact of such increase on the capital costs and operating costs of the System. The Borrower's notice shall demonstrate that the proposed increase is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, does not materially impair the WIFIA Lender's security or the Borrower's ability to comply with its obligations under the Related Documents (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

(g) Operations and Maintenance. The WIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project's operations and, as the WIFIA Lender may request from time to time, to receive reporting on the operation and management of the Project, and copies of any contracts relating to the operation and maintenance of the Project. The Borrower agrees to cooperate in good faith with the WIFIA Lender in the conduct of such monitoring by promptly providing the WIFIA Lender with such reports, documentation, or other information requested by the WIFIA Lender. The WIFIA Lender has the right, in its sole discretion, to retain such consultants or advisors, to carry out the provisions of this Section 16(g). On or prior to the Substantial Completion Date, the Borrower shall deliver to the WIFIA Lender an operations and maintenance manual with respect to the Project, in form and substance reasonably acceptable to the WIFIA Lender.

(h) Notices.

(i) The Borrower shall, within fifteen (15) days (or such other time as specified below) after the Borrower learns of the occurrence, give the WIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(A) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in **Exhibit I** (*Form of Certificate of Substantial Completion*);

(B) Defaults; Events of Default: any Default or Event of Default;

(C) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any

judgments against the Borrower that could reasonably be expected to have a Material Adverse Effect, either individually or in the aggregate;

(D) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower's plans to remedy or mitigate the effects of such failure or delay;

(E) Environmental Notices: any material notice of violation or material change in finding under any Environmental Law related to the Project or any material changes to the NEPA Determination;

(F) Amendments: except as otherwise agreed by the WIFIA Lender in writing, copies of fully executed amendments, modifications, replacements or supplements to any Related Document within ten (10) days following execution thereof; provided that such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant documents on EMMA;

(G) Related Document Defaults: any material breach or default or event of default on the part of the Borrower or any other party under any Related Document; provided that such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant documents on EMMA;

(H) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to materially and adversely affect the Project;

(I) Ratings Changes: any change in the rating assigned to the WIFIA Loan or any other Obligation, in each case by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness, and any notices, reports or other written materials (other than those that are ministerial in nature) received from any such rating agencies; provided that such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant documents on EMMA;

(J) 2 C.F.R. § 180.350 Notices: any notification required pursuant to 2 C.F.R. § 180.350, whether attributable to a failure by the Borrower to disclose information previously required to have been disclosed or due to the Borrower or any of its principals meeting any of the criteria set forth in 2 C.F.R. § 180.335;

(K) Issuance of Obligations: copies of any final issuing instrument (together with any continuing disclosure documents, ordinances, official statement, certifications or cash flow projections in connection therewith) prepared in connection with the incurrence of any Additional Parity Obligations or Additional Subordinate Obligations; provided that such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant documents on EMMA;

(L) Postings on EMMA: the posting of any document on EMMA in accordance with the requirements of any continuing disclosure agreement or similar document with respect to any outstanding Obligations relating to annual financial information and operating data and the reporting of significant events; provided that such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant document on EMMA; and

(M) Other Adverse Events: the occurrence of any other event or condition, including any notice of breach from a contract counterparty or any holder of any Obligations, that could reasonably be expected to result in a Material Adverse Effect or have a material and adverse effect on the Project.

(ii) Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in clause (i) above (other than sub-clauses (A) (*Substantial Completion*), (F) (*Amendments*), (I) (*Ratings Changes*) (in the case of a ratings upgrade), (K) (*Issuance of Obligations*) or (L) (*Postings on EMMA*)), the Borrower's Authorized Representative shall provide a statement to the WIFIA Lender setting forth the actions the Borrower proposes to take with respect thereto. The Borrower shall also provide the WIFIA Lender with any further information reasonably requested by the WIFIA Lender from time to time concerning the matters described in clause (i) above.

(i) Requested Information. The Borrower shall, at any time while the WIFIA Loan remains outstanding, promptly deliver to the WIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the System, the Project or the Net Revenues as the WIFIA Lender may from time to time reasonably request.

ARTICLE VI EVENTS OF DEFAULT

Section 17. Events of Default and Remedies.

(a) An “**Event of Default**” shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to pay when due any part of the principal amount of or interest on the WIFIA Loan (including WIFIA Debt Service required to have been paid pursuant to the provisions of Section 8 (*Payment of Principal and Interest*)) when and as the payment thereof shall be required under this Agreement or

the WIFIA Bond or on the Final Maturity Date (each such failure, a “**Payment Default**”) and such failure continues for a period of five (5) days.

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement or any other WIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the WIFIA Lender of written notice thereof or (B) the Borrower’s knowledge of such failure; provided that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 17(a)(ii), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable.

(iii) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the WIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the WIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty or certification that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Event of Default shall be deemed to have occurred under this Section 17(a)(iii) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(h) (*Representations and Warranties of Borrower – No Debarment*), Section 12(j) (*Representations and Warranties of Borrower – Compliance with Laws*), or Section 12(y) (*Representations and Warranties of Borrower – Patriot Act*), (C) in the reasonable determination of the WIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect, (D) in the reasonable determination of the WIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured and (E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days after the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation.

(iv) Acceleration of Obligations. Any acceleration shall occur of the maturity of any Obligation, or any such Obligation shall not be paid in full upon the final maturity thereof.

(v) Cross Default with Obligation Documents. Any default shall occur in respect of the performance of any covenant, agreement or obligation of the Borrower under any Obligation Document (other than any WIFIA Loan Document), and such default shall be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in such Obligation Document (as the case may be) with

respect to such default, and the Borrower shall have failed to cure such default or to obtain an effective written waiver thereof in accordance with the terms thereof.

(vi) Material Adverse Judgment. Any final, non-appealable judgment related to the Net Revenues, the System or the Project shall be entered against the Borrower which has a Material Adverse Effect.

(vii) Occurrence of Bankruptcy Related Event. A Bankruptcy Related Event shall occur.

(viii) Invalidity of WIFIA Loan Documents. (A) Any WIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower contests in any manner the validity or enforceability of any WIFIA Loan Document to which it is a party or denies it has any further liability under any WIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any WIFIA Loan Document to which it is a party; (B) this Agreement or any other applicable WIFIA Loan Document ceases (other than as expressly permitted thereunder) to grant a valid and binding lien on any material portion of the Net Revenues other than as a result of actions or a failure to act by, and within the control of, the WIFIA Lender, and with the priority purported to be created thereby; or (C) any event occurs that results in the material impairment in the priority of the WIFIA Lender's Lien on the Net Revenues or in the value of the Net Revenues.

(ix) Development Default. A Development Default shall occur.

(x) Cessation of System Operations. Following the Substantial Completion Date, operation of the System shall cease for a continuous period of not less than one hundred eighty (180) days unless (A) such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of the Borrower (and which the Borrower could not reasonably have avoided or mitigated) or (B) the Borrower shall either be self-insured in an amount sufficient to cover, or shall have in force an insurance policy or policies under which the Borrower is entitled to recover amounts sufficient to pay (and may use such amounts to pay), debt service for all Obligations (including WIFIA Debt Service) and costs and expenses of the Borrower during such cessation of operations.

(b) Upon the occurrence of any Bankruptcy Related Event, all obligations of the WIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the WIFIA Loan shall automatically be deemed terminated, and the Outstanding WIFIA Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the WIFIA Bond and the other WIFIA Loan Documents, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(c) Upon the occurrence of any Event of Default, the WIFIA Lender, by written notice to the Borrower, may exercise any or all of the following remedies:

(i) the WIFIA Lender may suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the WIFIA Loan;

(ii) the WIFIA Lender may apply the Default Rate provisions of Section 6 (*Interest Rate*);

(iii) the WIFIA Lender may suspend or debar the Borrower from further participation in any Government program administered by the WIFIA Lender and notify other departments and agencies of such default;

(iv) the WIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the other WIFIA Loan Documents, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law the moneys adjudged or decreed to be payable; and

(v) the WIFIA Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor under applicable law with respect thereto, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by the Borrower under this Agreement or the other WIFIA Loan Documents then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents; provided that, notwithstanding anything to the contrary set forth in any WIFIA Loan Document, without the consent of any other Person, the WIFIA Lender shall be entitled to take such action, including a mandamus action against the Borrower and its officials, to enforce the performance by the Borrower of any provisions of this Agreement.

(d) Upon the acceleration of any Parity Obligations, the Outstanding WIFIA Loan Balance shall thereupon automatically become immediately due and payable together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement and the other WIFIA Loan Documents, all without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(e) No action taken pursuant to this Section 17 shall relieve the Borrower from its obligations pursuant to this Agreement or the other WIFIA Loan Documents, all of which shall survive any such action.

ARTICLE VII MISCELLANEOUS

Section 18. Disclaimer of Warranty. The WIFIA Lender makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for a particular purpose or fitness for use of the Project or any portion thereof or any other warranty with respect thereto. In no event shall the WIFIA Lender be liable for any incidental, indirect, special or consequential damages incidental to or arising out of this Agreement or the

System (including the Project) or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 19. No Personal Recourse. No official, employee or agent of the WIFIA Lender or the Borrower or any Person executing this Agreement or any of the other WIFIA Loan Documents shall be personally liable on this Agreement or such other WIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 20. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Government, or the WIFIA Lender, solely by virtue of the WIFIA Loan, and the Borrower agrees to indemnify and hold the WIFIA Lender, the Servicer (if any), the Administrator, and the Government harmless, to the extent permitted by law and in accordance with Section 32 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of the WIFIA Loan, and that no third party creditor of the Borrower shall have any right against the WIFIA Lender with respect to the WIFIA Loan made pursuant to this Agreement.

Section 21. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the WIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 22. WIFIA Lender's Authorized Representative. The WIFIA Lender hereby appoints the Director of the WIFIA Program, whose notice details are set forth below in Section 31 (*Notices*), to serve as the WIFIA Lender's Authorized Representative under this Agreement until such time as a successor or successors shall have been appointed. Thereafter, the successor in office shall serve as the WIFIA Lender's Authorized Representative. The WIFIA Lender shall provide notice to the Borrower within a reasonable time period following the succession.

Section 23. Servicer. The WIFIA Lender may from time to time designate another entity or entities to perform, or assist the WIFIA Lender in performing, the duties of the Servicer or specified duties of the WIFIA Lender under this Agreement and the WIFIA Bond. The WIFIA Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the WIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the WIFIA Lender shall have delegated to such Servicer. The WIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the WIFIA Bond. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 24. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement or the WIFIA Bond shall in any event be effective without the prior written consent of each of the parties hereto.

Section 25. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 26. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 27. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder or under the WIFIA Bond nor any interest herein or therein may be assigned or delegated by the Borrower without the prior written consent of the WIFIA Lender.

Section 28. Remedies Not Exclusive. No remedy conferred herein or in the WIFIA Bond or reserved to the WIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the WIFIA Bond or now or hereafter existing at law or in equity or by statute.

Section 29. Delay or Omission Not Waiver. No delay or omission of the WIFIA Lender to exercise any right or remedy provided hereunder or under the WIFIA Bond upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or the WIFIA Bond or by law to the WIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the WIFIA Lender.

Section 30. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 31 (*Notices*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 31. Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to WIFIA Lender:

Environmental Protection Agency
WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

If to Borrower:

City of Waukesha, Waukesha County, Wisconsin
201 Delafield Street
Waukesha, WI 53188
Attention: Richard Abbott, Finance Director
Email: rabbott@waukesha-wi.gov

With a copy to:

Waukesha Water Utility
P.O. Box 1648
Waukesha, WI 53187
Attention: Joseph P. Ciurro, Administrative Services
Manager
Email: jciurro@waukesha-water.com

Unless otherwise instructed by the WIFIA Lender's Authorized Representative, all notices to the WIFIA Lender should be made by email to the email address noted above for the WIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, or by the WIFIA Lender's Authorized Representative, with respect to notices to the WIFIA Lender or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 32. Indemnification. The Borrower shall, to the extent permitted by law, indemnify the WIFIA Lender and any official, employee, agent, advisor or representative of the WIFIA Lender (each such Person being herein referred to as an "**Indemnatee**") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the WIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties,

costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 32 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 32. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the WIFIA Lender shall assert, and each of the Borrower and the WIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the WIFIA Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 32 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 32 shall survive the payment or prepayment in full or transfer of the WIFIA Loan, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 32) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 33. Sale of WIFIA Loan. The WIFIA Lender shall not sell the WIFIA Loan at any time prior to the Substantial Completion Date. After such date, the WIFIA Lender may sell the WIFIA Loan to another entity or reoffer the WIFIA Loan into the capital markets only in accordance with the provisions of this Section 33. Such sale or reoffering shall be on such terms as the WIFIA Lender shall deem advisable. However, in making such sale or reoffering the WIFIA Lender shall not change the terms and conditions of the WIFIA Loan without the prior written consent of the Borrower in accordance with Section 24 (*Amendments and Waivers*). The WIFIA Lender shall provide, at least sixty (60) days prior to any sale or reoffering of the WIFIA Loan, written notice to the Borrower of the WIFIA Lender's intention to consummate such a sale or reoffering; provided that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 33 shall neither (x) obligate the WIFIA Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the WIFIA Lender, for any reason, does not sell the WIFIA Loan.

Section 34. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 35. Termination. This Agreement shall terminate upon the irrevocable payment in full in immediately available funds by the Borrower of the Outstanding WIFIA Loan Balance,

together with all accrued interest, fees and expenses with respect thereto; provided that the indemnification requirements of Section 32 (*Indemnification*), the reporting and record keeping requirements of Section 14(o) (*Affirmative Covenants – Access; Records*) and the payment requirements of Section 10 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such sections.

Section 36. Integration. This Agreement, together with the other WIFIA Loan Documents, constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

[The remainder of this page intentionally left blank; signature pages immediately follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**CITY OF WAUKESHA, WAUKESHA
COUNTY, WISCONSIN,**
by its authorized representative




By: Shawn N. Reilly
Name: Shawn N. Reilly
Title: Mayor

**CITY OF WAUKESHA, WAUKESHA
COUNTY, WISCONSIN,**
by its authorized representative

By: Gina Kozlik
Name: Gina Kozlik
Title: City Clerk

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**, acting by and through
the Administrator of the Environmental Protection
Agency

By: 
Name: Andrew R. Wheeler
Title: Administrator

SCHEDULE I
PROJECT BUDGET

USES										
Contract Package Name		Associated Contract Package(s)	Working Opinion of Probable Construction Cost 2021 (\$M)	Construction Cost Total (\$M)				Construction Cost Subtotal (\$M)	Additional WIFIA Contingency Allocation	Construction Cost Total
				2020	2021	2022	2023			
Water Supply	Booster Pumping Station, Storage & Chemical Facilities	3	\$43.6	\$0.0	\$14.5	\$17.4	\$11.6	\$43.6	\$4.4	\$48.0
	Water Tower	3A	\$4.5	\$0.0	\$1.5	\$1.8	\$1.2	\$4.5	\$0.5	\$5.0
	Water Supply Pipeline 84th to Coffee / Swartz	2A	\$32.3	\$5.4	\$16.2	\$10.8	\$0.0	\$32.3	\$3.2	\$35.5
	Water Supply Pipeline Coffee	2B	\$11.0	\$0.0	\$6.9	\$4.1	\$0.0	\$11.0	\$1.1	\$12.1
	<i>Water Supply Subtotal</i>		<i>\$91.4</i>	<i>\$5.4</i>	<i>\$39.1</i>	<i>\$34.1</i>	<i>\$12.8</i>	<i>\$91.4</i>	<i>\$9.1</i>	<i>\$100.5</i>
Return Flow	Return Flow Pumping Station	4	\$11.1	\$3.3	\$6.7	\$1.1	\$0.0	\$11.1		\$11.1
	Return Flow Pipeline	2B	\$6.9	\$0.0	\$4.3	\$2.6	\$0.0	\$6.9		\$6.9

	(Combined Corridor)									
	Return Flow Pipeline	5	\$40.1	\$10.5	\$20.9	\$8.7	\$0.0	\$40.1		\$40.1
	Return Flow Pipeline and Outfall (does not include 60 th St. Gravity Sewer)	6	\$54.4	\$13.6	\$27.2	\$13.6	\$0.0	\$54.4		\$54.4
	Return Flow Subtotal		\$112.5	\$27.4	\$59.1	\$26.0	\$0.0	\$112.5		\$112.5
Total Construction Costs			\$203.9	\$32.8	\$98.2	\$60.1	\$12.8	\$203.9	\$9.1	\$213.0
Engineering / Soft Costs			Cost (\$M)							
			Thru 2019	2020	2021	2022	2023	Total		
Water Supply	Planning / Design / Proj. Mgmt		\$20.0	\$2.1	\$4.5	\$0.8	\$0.7	\$28.1		
	Construction Mgmt		\$0.7	\$3.0	\$3.0	\$1.5	\$0.2	\$8.4		
	Distribution System Improvements		\$17.5	\$0.0	\$0.0	\$0.0	\$0.0	\$17.5		
	Water Supply Subtotal		\$38.3	\$5.1	\$7.5	\$2.3	\$0.9	\$54.0		
Return Flow	Planning / Design / Proj. Mgmt		\$19.2	\$3.1	\$1.8	\$0.6	\$0.6	\$25.4		
	Construction Mgmt		\$0.7	\$3.2	\$3.3	\$1.6	\$0.3	\$9.0		
	Return Flow Subtotal		\$20.0	\$6.3	\$5.1	\$2.2	\$0.9	\$34.4		
Water Supply Total			\$154.6							
Return Flow Total			\$146.9							
Total Project Costs			\$301.5							
Total Eligible Project Costs			\$301.5							

SOURCES			
	Source	Percentage	Amount (\$M)
Water Supply	WIFIA Loan	45%	\$137.10
	Drinking Water State Revolving Fund Loan	4%	\$13.40
	General Obligation Bonds	1%	\$4.10
Return Flow	Cash	49%	\$146.90
Total		100%	\$301.50

SCHEDULE II

CONSTRUCTION SCHEDULE



Great Water Alliance Program
Waukesha Water Utility
Program Milestone Schedule
USEPA Submittal



May 2020

Contract Package No.	Contract Package Description	100% Design Completion	Bid Advertising	Bid Award	Construction NTP	Construction Substantial Completion	Construction Final Completion	Transition Startup	Program Completion
2A	Water Supply Pipeline Section I, II, and III and Station Suction Pipelines	Jun-20	Jul-20	Oct-20	Nov-20	Aug-22	Oct-22	Oct-23	23-Dec
2B	Return Flow Pipeline, BPS Discharge Pipeline, Water Supply Pipeline	Jul-20	Nov-20	Jan-21	Feb-21	Mar-22	May-22		
3	Booster Pumping Station, Storage, and Chemical Facilities	Dec-20	Jan-21	Mar-21	Apr-21	Jul-23	Sep-23		
3A	Rempe Water Tower and Site Work	Dec-20	Mar-21	May-21	Apr-21	Jul-22	Sep-22		
4	Return Flow Pumping Station	Mar-20	Apr-20	Jun-20	Jul-20	Jan-22	Apr-22		
5	Return Flow Pipeline	Feb-20	Mar-20	May-20	Jun-20	Feb-22	Apr-22		
6	Return Flow Pipeline, 18-Inch Sanitary Sewer, and Outfall Facilities	Mar-20	Apr-20	Jun-20	Jul-20	Apr-22	Jun-22		

SCHEDULE III
EXISTING INDEBTEDNESS

A. Outstanding Parity Obligations

	Agreement/Series	Maximum Authorized Principal Amount	Actual Issuance	Principal Outstanding (7/31/2020)
1.	Waterworks System Revenue Bonds, Series 2013, dated May 22, 2013 maturing on May 1, 2033	\$1,117,601	\$1,117,601	\$775,725
2.	Waterworks System Revenue Bonds, Series 2018A, dated June 27, 2018 maturing on May 1, 2038	\$684,275	\$679,774	\$622,562
3.	Waterworks System Revenue Bonds, Series 2019B, dated March 27, 2019 maturing on May 1, 2038	\$9,201,816	\$8,863,261	\$8,474,481
4.	Waterworks System Revenue Bonds, Series 2019E, dated December 11, 2019 maturing on May 1, 2039	\$2,903,659	\$2,717,094	\$2,601,317

B. Outstanding Subordinate Obligations

	Agreement/Series	Maximum Authorized Principal Amount	Actual Issuance	Principal Outstanding (7/31/2020)
1.	Waterworks System Revenue Bond Anticipation Note, Series 2018, dated April 2, 2018 final maturity April 1, 2023	\$32,800,000	\$24,114,032	\$24,114,032

SCHEDULE IV

WIFIA PAYMENT INSTRUCTIONS

Acceptable Methods for WIFIA Payments to EPA

Option 1 PAY.GOV

Use of Pay.gov to make payments to EPA is the preferred electronic payment method. In Pay.gov, users can track their payments to EPA and schedule recurring or automatic payments. Although it is not mandatory to register for a user id to access and use Pay.Gov, registration is recommended to have access to all Pay.gov system functionality.

1. Access the Pay.gov system by going to <https://www.pay.gov> and search for WIFIA or click on the following hyperlink to directly launch the [WIFIA Loan Collection & Fees Form](#).
2. Provide the following information on your payment to ensure proper credit:
 - Remitter's contact phone number
 - Company/Organization Name as it appears on EPA document
 - Complete address, including city, state, zip code
 - Project Name
 - Loan Number: this is EPA WIFIA Loan number, NOT the remitter's number
 - From the "Payment Type" drop down menu select the type from the Fee Notice letter
 - Other Description: please note the reference number from the Fee Notice letter
3. Follow the remaining on-screen instructions to successfully process the payment to EPA.
4. Send an email to OCFO-OC-ACAD-WIFIA@epa.gov and wifia_portfolio@epa.gov informing that a payment has been made.

Option 2 FEDWIRE

Wire transfers made through FedWire are an alternative electronic wire transfer initiated between the borrower and its organization's financial institution (bank) and EPA. FedWire is typically used to initiate financial institution (bank) generated "same day" electronic payments.

Borrowers must work within the processing guidelines established by their bank, which may include processing cutoffs, transaction fees, and other bank requirements.

Banks that do not maintain an account at a Federal Reserve Bank (FRB) must use the services of correspondent banks that do have an FRB account. To process a payment using FedWire please:

1. Send FedWire deposits as early as possible and no later than 5 p.m. ET on the desired EPA receipt date
2. Review the FedWire form Instructions provided in Attachment 1 and complete the form. It is very important that all relevant details identified in the instructions are accurate.
3. Send an email to OCFO-OC-ACAD-WIFIA@epa.gov and wifia_portfolio@epa.gov informing that a payment has been made.

Option 3 CHECK PAYMENTS (Confirm with EPA prior to making any check payments. Not permitted for (i) payments of Principal or Interest or (ii) any payment made during the COVID-19 crisis.)

1. Send checks to:

USPS Mailing Address

Laura Collier
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 2733R
Washington, DC 20460

Courier Address (e.g., FEDEX, UPS)


Courier Address
Laura Collier
Ronald Reagan Building
1300 Pennsylvania Ave., N.W.
Rm # 81164
Washington, DC 20004

2. Provide the following information on your check payment to ensure proper credit please:
 - Company/remitter's name (borrower name as it appears on EPA document)
 - Complete address, including city, state, zip
 - Remitter's point of contact person and phone number

- EPA WIFIA Loan # (NOT the remitter's number)
 - Payment Type/Reason for payment from the Fee Notice letter
 - Reference number from the Fee Notice letter.
3. Send an email to OCFO-OC-ACAD-WIFIA@epa.gov and wifia_portfolio@epa.gov informing that a payment has been submitted.

NOTE: When checks are provided as payment, you authorize the EPA to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When the EPA uses information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.

Attachment 1 – FedWire Payment Form and Instructions

		U.S. Environmental Protection Agency FUNDS TRANSFER DEPOSIT		
PC		INSTRUCTIONS: Explicit completion and routing instructions are located on the reverse of this form. It is requested that prudent care be taken to ensure that all information is provided in the requested format. Failure to provide the information in the requested format may cause a delay in the notification of the funds transfer to EPA.		
TO 021030004	TYPE 10			
FROM	CL	REF	AMOUNT \$	
SENDER				
RECEIVER				
THIRD PARTY INFORMATION				

The above FedWire form presented to your bank (*who will initiate and transmit the FedWire payment*) **MUST** contain all details below: *

TO (ABA)	
TYPE	
RECEIVER	
THIRD PARTY INFORMATION	<p>To ensure proper credit please include the following information on your payment:</p> <ul style="list-style-type: none"> • Company/remitter's name (borrower name as it appears on EPA document) • Complete address, including city, state, zip code • Remitter's point of contact person and phone number • EPA WIFIA Loan # (NOT the remitter's number) • Payment Type/Reason for payment from the Fee Notice letter • Reference number from the Fee Notice letter
Shaded Areas	Those items that are shaded on the Form are to be entered by the bank on the funds transfer message. (Depending on the Federal Reserve District, some items may not be required.)
*Important: Failure to initiate the FedWire electronic wire transaction properly with the above fields included, will result in untimely or non-receipt of funds at EPA.	

For questions about payments to EPA please contact EPA's Office of the Controller:

Phone: 202-564-7593. Voicemails can be left when calling outside business hours

Email: OCFO-OC-ACAD-WIFIA@epa.gov

For questions about the WIFIA program:

Email: wifia@epa.gov

SCHEDULE V
FLOW OF FUNDS

The Gross Earnings of the System shall be deposited as collected in the Revenue Fund and shall be transferred monthly to the funds listed below in the following order of priority and in the manner set forth below:

(a) to the Operation and Maintenance Fund, in an amount equal to the estimated Current Expenses for such month and for the following month (after giving effect to available amounts in such fund from prior deposits);

(b) to the Debt Service Fund, for deposit into the Parity Principal and Interest Account (after giving effect to available amounts in such account from accrued interest, any premium or any other source), an amount equal to one-sixth (1/6) of the next installment of interest coming due on the WIFIA Bond and the other Parity Obligations then outstanding and an amount equal to one-twelfth (1/12) of the installment of principal of the WIFIA Bond and the other Parity Obligations coming due during such Bond Year;

(c) to the Debt Service Fund, for deposit into the Reserve Account, any amount required by a future resolution for Parity Obligations secured thereby;

(d) to the Debt Service Fund, for deposit into the Subordinate Principal and Interest Account (after giving effect to available amounts in such account from accrued interest, any premium or any other source), an amount equal to one-sixth (1/6) of the next installment of interest coming due on the Subordinate Obligations then outstanding and an amount equal to one-twelfth (1/12) of the installment of principal of the Subordinate Obligations coming due during such Bond Year (exclusive of principal to be paid on the 2018 BAN with proceeds of revenue bonds);

(e) to the Depreciation Fund, an amount determined by the Governing Body to be sufficient to provide a proper and adequate depreciation account for the System; and

(f) to the Surplus Fund, any amount remaining in the Revenue Fund after the monthly transfers required above have been completed.

Transfers from the Revenue Fund to the Operation and Maintenance Fund, the Debt Service Fund, the Depreciation Fund and the Surplus Fund shall be made monthly not later than the twentieth (20th) day of each month, and such transfer shall be applicable to monies on deposit in the Revenue Fund as of the last day of the month preceding. Any transfer or deposit required to be made at the end of any Borrower Fiscal Year shall be made within sixty (60) days after the close of such Borrower Fiscal Year.

It is the express intent and determination of the Governing Body that the amounts transferred from the Revenue Fund and deposited in the Debt Service Fund shall be sufficient in any event to pay the interest on the Parity Obligations as the same accrues and the principal thereof as the same matures, and to fund the Reserve Account as required in connection with any future Parity Obligations secured thereby.

SCHEDULE VI

PROJECT DESCRIPTION

Activity		Associated Contract Package(s)
Water Supply	Booster Pumping Station, Storage & Chemical Facilities	3
	Water Tower	3A
	Water Supply Pipeline 84 th to Coffee/Swartz	2A
	Water Supply Pipeline Coffee	2B
Return Flow	Return Flow Pumping Station	4
	Return Flow Pipeline (combined corridor)	2B
	Return Flow Pipeline	5
	Return Flow Pipeline and Outfall (does not include 60 th Street Gravity Sewer)	6

SCHEDULE 12(n)

CONSTRUCTION CONTRACTS

A. Existing Construction Contracts

Contract Package No.	Description	Bid Award Date
4	Return Flow Pumping Station	June 2020
5	Return Flow Pipeline	May 2020
6	Return Flow Pipeline, 18-inch Sanitary Sewer, Outfall Facilities	June 2020

B. Additional Construction Contracts

Contract Package No.	Description	Est. Bid Award Date
2A	Water Supply Pipeline Section 1, II, and III and Station Suction Pipelines	Oct. 2020
2B	Return Flow Pipeline, BPS Discharge Pipeline, Water Supply Pipeline	Jan. 2021
3	Booster Pumping Station, Storage, and Chemical Facilities	Mar. 2021
3A	Rempe Water Tower & Site Work	May 2021

EXHIBIT A

FORM OF WIFIA BOND

CITY OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN

WATER UTILITY PORTION OF GREAT LAKES WATER SUPPLY PROJECT

(WIFIA – N18147WD)

Effective Date: August 6, 2020

Maximum Principal Amount: \$137,100,000

Interest Rate Per Annum: 1.16%

Due: May 1, 2058

CITY OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN, a municipality organized under the laws of the State of Wisconsin (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, acting by and through the Administrator of the United States Environmental Protection Agency, or its assigns (the “**WIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the WIFIA Lender (such lesser amount being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the WIFIA Loan Agreement (as defined below)) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, as more fully described in the WIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the WIFIA Loan Agreement in accordance with **Exhibit F (WIFIA Debt Service)** to the WIFIA Loan Agreement, as revised from time to time in accordance with the WIFIA Loan Agreement, until paid in full (which **Exhibit F**, as modified from time to time in accordance with the terms of the WIFIA Loan Agreement, is incorporated in and is a part of this WIFIA Bond). The WIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit F** to the WIFIA Loan Agreement from time to time in accordance with the terms of the WIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the WIFIA Lender’s determination of such matters as set forth on **Exhibit F** to the WIFIA Loan Agreement shall be conclusive evidence thereof; provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other WIFIA Loan Document.

Payments hereon are to be made in accordance with Section 8(d) (*Payment of Principal and Interest – Manner of Payment*) and Section 31 (*Notices*) of the WIFIA Loan Agreement as the same become due. Principal of and interest on this WIFIA Bond shall be paid in funds available

on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. If the Substantial Completion Date occurs on any date prior to May 1, 2023, the due date of this WIFIA Bond shall be deemed to be amended to the Principal Payment Date immediately preceding the date that is thirty-five (35) years following such Substantial Completion Date without any further action required on the part of the Borrower or the WIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this WIFIA Bond without the prior written agreement of the WIFIA Lender. Any such amendment shall be reflected in a revised **Exhibit F** to the WIFIA Loan Agreement.

This WIFIA Bond has been executed pursuant to that certain WIFIA Loan Agreement, dated as of August 6, 2020, between the WIFIA Lender and the Borrower (the “**WIFIA Loan Agreement**”) and is issued to evidence the obligation of the Borrower under the WIFIA Loan Agreement to repay the loans made by the WIFIA Lender and any other payments of any kind required to be paid by the Borrower under the WIFIA Loan Agreement or the other WIFIA Loan Documents referred to therein. Reference is made to the WIFIA Loan Agreement for details relating to the Borrower’s obligations hereunder. All capitalized terms used in this WIFIA Bond and not defined herein shall have the meanings set forth in the WIFIA Loan Agreement.

This WIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the WIFIA Loan Agreement; provided that such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1 in excess thereof), from time to time, but not more than annually, without penalty or premium, by paying to the WIFIA Lender all or part of the principal amount of the WIFIA Bond in accordance with the WIFIA Loan Agreement.

Payment of the obligations of the Borrower under this WIFIA Bond is secured pursuant to the WIFIA Loan Documents. This WIFIA Bond is payable only from the income and revenues derived from the operation of the System of the Borrower. This WIFIA Bond is issued on a parity with the Parity Obligations and senior to the Subordinate Obligations. This WIFIA Bond does not constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory debt limitation or provision.

Any delay on the part of the WIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

All acts, conditions and things required by the Constitution and laws of the State to happen, exist, and be performed precedent to and in the issuance of this WIFIA Bond have happened, exist and have been performed as so required. This WIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, CITY OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN has caused this WIFIA Bond to be executed in its name and its seal to be affixed

hereto and attested by its duly authorized officer, all as of the Effective Date of the WIFIA Bond set forth above.

**CITY OF WAUKESHA, WAUKESHA
COUNTY, WISCONSIN,**
by its authorized representative

(SEAL)

By: _____

Name:

Title:

ATTEST:

City Clerk

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned hereby unconditionally sells, assigns and transfers unto

(Please insert Social Security or other identifying number of assignee(s)):

the within note and all rights thereunder.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

EXHIBIT B

ANTICIPATED WIFIA LOAN DISBURSEMENT SCHEDULE

<u>Federal Fiscal Year</u>	<u>Amount</u>
2020	\$31,700,000
2021	\$50,500,000
2022	\$39,800,000
2023	\$15,100,000
Total	\$137,100,000

EXHIBIT C

FORM OF NON-DEBARMENT CERTIFICATE

The undersigned, on behalf of CITY OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN (the “**Borrower**”), hereby certifies that CITY OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, the Borrower and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. 1532.995):

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(b) Have not within a three (3) year period preceding the Effective Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement, dated as of August 6, 2020, by and between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency.

Dated: August 6, 2020

**CITY OF WAUKESHA, WAUKESHA
COUNTY, WISCONSIN,**
by its authorized representative

By: _____
Name:
Title:

EXHIBIT D

REQUISITION PROCEDURES AND FORM OF REQUISITION

This **Exhibit D** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of WIFIA Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Water Utility Portion of the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through 4 set out the circumstances in which the WIFIA Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the WIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the WIFIA Lender under the WIFIA Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the WIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the WIFIA Loan Agreement during the term thereof.

Section 1 General Requirements. All requests by the Borrower for the disbursement of WIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the WIFIA Lender, in accordance with Section 31 (*Notices*) of the WIFIA Loan Agreement, of a Requisition, in form and substance satisfactory to the WIFIA Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as **Appendix One** (*Form of Requisition*) to this **Exhibit D**.

Supporting documentation should be submitted with the Requisition. If the Borrower anticipates that it will draw down all or a portion of the proceeds of the WIFIA Loan to reimburse the Borrower for Eligible Project Costs paid by or on behalf of the Borrower prior to such disbursement of WIFIA Loan proceeds, whether paid from funds of the Borrower or proceeds of Obligations issued by the Borrower, including for the purpose of paying or redeeming such Obligations, the Borrower shall deliver appropriate documentation, including invoices and records, evidencing such incurred or paid Eligible Project Costs (the "**Eligible Project Costs Documentation**"). The Eligible Project Costs Documentation must provide sufficient detail to enable the WIFIA Lender to verify that such costs are Eligible Project Costs paid by the Borrower, in connection with the reimbursement of such Eligible Project Costs. The WIFIA Lender shall review the Eligible Project Costs Documentation for compliance with WIFIA disbursement requirements, and any amounts approved by the WIFIA Lender as Eligible Project Costs will be disbursed at such time as the Borrower submits a Requisition in respect of such approved amounts.

The WIFIA Lender agrees to promptly send to the Borrower in accordance with Section 31 (*Notices*) of the WIFIA Loan Agreement, an acknowledgement of receipt of each Requisition in the form attached as **Appendix Two** (*[Approval/Disapproval] of the WIFIA Lender*) to this **Exhibit D** setting forth the date of receipt by the WIFIA Lender of such Requisition and setting forth the Business Day on which disbursement will be made absent denial by the WIFIA Lender. All disbursement requests must be received by the WIFIA Lender at or before 5:00 P.M. (EST) on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if either such day is not a Business Day, the next succeeding

Business Day. If a Requisition is approved by the WIFIA Lender, the WIFIA Lender will notify the Borrower of such approval and of the amount so approved.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the WIFIA Lender if it is: (a) submitted without signature; (b) submitted under signature of a Person other than a Borrower's Authorized Representative; (c) submitted after prior disbursement of all proceeds of the WIFIA Loan; (d) submitted without adequate Eligible Project Costs Documentation, including (i) copies of invoices and records evidencing the Eligible Project Costs, (ii) a summary of the progress of construction of the Project and a general description of the work done for which the funds being requisitioned are being applied (or a certification that no change has occurred since the date of the latest quarterly report provided pursuant to Section 16(c) (*Reporting Requirements – Construction Reporting*), and (iii) a copy of the most recent update to the Borrower's risk register, if requested by the WIFIA Lender.

The WIFIA Lender will notify the Borrower of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified above (other than Section 2(c)) must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the WIFIA Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the WIFIA Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the WIFIA Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The WIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of WIFIA Loan proceeds if: (a) a Default or an Event of Default shall have occurred and be continuing; (b) the Borrower (i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable law, in connection with the transactions contemplated hereby; (ii) prevents or materially impairs the ability of the WIFIA Lender to monitor compliance by the Borrower with applicable law pertaining to the Project or with the terms and conditions of the WIFIA Loan Agreement; (iii) fails to observe or comply with any applicable law, or any term or condition of the WIFIA Loan Agreement; (iv) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions; Approval of Requisition*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*) of the WIFIA Loan Agreement; or (v) fails to deliver Eligible Project Costs Documentation satisfactory to the WIFIA Lender at the times and in the manner specified by the WIFIA Loan Agreement; provided that in such case of Section 4(v), the WIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

APPENDIX 1

FORM OF REQUISITION

United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
WJC-W 6201A
Washington, D.C. 20460
Attention: WIFIA Director

Re: WATER UTILITY PORTION OF GREAT LAKES WATER SUPPLY PROJECT
(WIFIA Ref N18147WI)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions; Approval of Requisition*) of the WIFIA Loan Agreement, dated as of August 6, 2020 (the “**WIFIA Loan Agreement**”), by and between CITY OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”), the Borrower hereby requests disbursement in the amount set forth below in respect of Eligible Project Costs paid or incurred by the Borrower in connection with the Water Utility Portion of the Project. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement.

In connection with this Requisition the undersigned, as the Borrower’s Authorized Representative, hereby represents and certifies the following:

1.	Project name	Water Utility Portion of Great Lakes Water Supply Project
2.	Borrower name	City of Waukesha, Waukesha County, Wisconsin
3.	WIFIA reference number	18147WI
4.	Requisition number	[]
5.	Requested disbursement amount	\$()
6.	Requested disbursement date (the “Disbursement Date”)	[]
7.	Total amounts previously disbursed under the WIFIA Loan Agreement	\$()
8.	Wire instructions	[]

9. The amounts hereby requisitioned have been paid or incurred and approved for payment by or on behalf of the Borrower for Eligible Project Costs in connection with the Water Utility Portion of the Project and have not been paid for or reimbursed by any previous disbursement from WIFIA Loan proceeds. No portion of the amounts requisitioned will be applied to pay for Eligible Project Costs that have been previously paid, or are expected to be paid, with proceeds of debt of the Borrower that is not the WIFIA Loan.

10. The aggregate amount of all disbursements of the WIFIA Loan (including the amount requested under this Requisition) does not exceed (a) the maximum principal amount of the WIFIA Loan, (b) the amount of Eligible Project Costs paid or incurred by the Borrower in connection with the Water Utility Portion of the Project, (c) the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated WIFIA Loan Disbursement Schedule and (d) the aggregate principal amount of the Annual Maximum Disbursement Certificates heretofore submitted by the Borrower.
11. The Borrower has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under the WIFIA Loan, will be sufficient to pay the reasonably anticipated remaining Total Project Costs.
12. The total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs.
13. The Borrower has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval has been issued and is in full force and effect (and is not subject to any notice of violation, breach or revocation).
14. Each of the insurance policies maintained by the Borrower pursuant to Section 14(f) (*Affirmative Covenants – Insurance; Loss Proceeds*) of the WIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
15. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds), (a) no Default or Event of Default, and no event of default under any other Related Document and (b) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any Related Document, in each case, has occurred and is continuing. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since the Effective Date.
16. The Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Lender.
17. The representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties are true and correct as of such earlier date).

18. Each Obligation Document that has been delivered by the Borrower to the WIFIA Lender pursuant to Section 11(b)(v) (*Conditions Precedent – Conditions Precedent to Disbursements*) is complete, fully executed and in full force and effect.
19. The current estimated percentage of physical completion of the Project is [____]%. The Borrower is in compliance with Section 16(c) (*Reporting Requirements – Construction Reporting*) and no change has occurred since the date of the most recently delivered quarterly construction progress report that could reasonably be expected to cause a Material Adverse Effect.
20. All documentation evidencing the Eligible Project Costs to be reimbursed to the Borrower by the above-requested disbursement has been delivered by the Borrower to the WIFIA Lender at the times and in the manner specified by the WIFIA Loan Agreement, including the details set forth below:

								WIFIA USE ONLY	
Vendor or Contractor Name ¹	Invoice Number ²	Invoice Date	Payment Date	Invoice Amount	WIFIA Requested Amount ³	Activity Type ⁴	Description of Activity ⁵	Approved Amount	Notes

The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001, to the extent the Government deems appropriate.

¹ If seeking reimbursement for internal costs, enter “Internally financed activities.”

² Vendor’s number indicated on the invoice sent to the Borrower.

³ If the amount requested for reimbursement by the WIFIA Lender is less than the total amount of the invoice, include an explanation for the difference.

⁴ Specify whether activity is: (a) **Development phase activity**, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) **Construction**, which includes construction, reconstruction, rehabilitation and replacement activities; (c) **Acquisition of real property**, which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) **Carrying costs**, including capitalized interest, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) **WIFIA fees**, including for application and credit processing; or (f) **Other**, with an explanation in the “Description of Activity” column.

⁵ Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the disbursement request.

Date:

CITY OF WAUKESHA, WAUKESHA COUNTY,
WISCONSIN,

By its authorized representative

By: _____

Name:

Title: _____

APPENDIX TWO TO EXHIBIT D

[APPROVAL/DISAPPROVAL] OF THE WIFIA LENDER (To be delivered to the Borrower)

Requisition Number [_____] is [approved in the amount of \$[_____] [approved in part in the amount of \$[_____] [not approved, for the reasons set forth in Annex A attached hereto,]⁶ by the WIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions; Approval of Requisition*) of the WIFIA Loan Agreement, dated as of August 6, 2020, by and between City of Waukesha, Waukesha County, Wisconsin (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “**WIFIA Lender**”).

Any determination, action or failure to act by the WIFIA Lender with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the WIFIA Lender’s sole discretion, and in no event shall the WIFIA Lender be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**, acting by and through
the Administrator

By: _____
WIFIA Lender’s Authorized Representative
Name:
Title:
Dated:

⁶ If there is any partial or full denial of approval, the WIFIA Lender should provide a separate attachment setting forth the reasons for such partial or full denial of approval.

EXHIBIT E

FORM OF NON-LOBBYING CERTIFICATE

The undersigned, on behalf of CITY OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN (the “**Borrower**”), hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of the WIFIA Loan.

(b) If any funds other than proceeds of the WIFIA Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the WIFIA Loan, the Borrower shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(c) The Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement, dated as of August 6, 2020 (the “**WIFIA Loan Agreement**”), by and between the United States Environmental Protection Agency, acting by and through the Administrator (the “**WIFIA Lender**”), and the Borrower, as the same may be amended from time to time.

This certification is a material representation of fact upon which reliance was placed when the WIFIA Lender entered into the WIFIA Loan Agreement. Submission of this certification is a prerequisite to the effectiveness of the WIFIA Loan Agreement imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Dated: August 6, 2020

**CITY OF WAUKESHA, WAUKESHA
COUNTY, WISCONSIN,**
by its authorized representative

By:

Name:

Title:

EXHIBIT F
WIFIA DEBT SERVICE

[Attached.]

City of Waukesha - Great Lakes Water Supply Project - 18147W1
WIFA Loan Amortization Schedule

Closing Date 8/6/2020
Loan Amount \$ 137,100,000.00
Interest rate 1.16%
Weight Average Life 26.9

Period Start Date	Period End Date	Period Payment Date	Disbursements in Period	Capitalized Interest	Interest Payment	Principal Repayment	Principal Payment as a % of Aggregate Amount of All Disbursements	Semi-annual Debt Service Payment	Ending Balance
8/6/2020	10/31/2020	11/1/2020	\$31,700,000.00	\$0.00	\$61,286.67	\$0.00	0.00%	\$61,286.67	\$31,700,000.00
11/1/2020	4/30/2021	5/1/2021	\$50,500,000.00	\$0.00	\$379,126.67	\$0.00	0.00%	\$379,126.67	\$82,200,000.00
5/1/2021	10/31/2021	11/1/2021	\$0.00	\$0.00	\$476,760.00	\$0.00	0.00%	\$476,760.00	\$82,200,000.00
11/1/2021	4/30/2022	5/1/2022	\$39,800,000.00	\$0.00	\$630,653.34	\$0.00	0.00%	\$630,653.34	\$122,000,000.00
5/1/2022	10/31/2022	11/1/2022	\$0.00	\$0.00	\$707,600.00	\$0.00	0.00%	\$707,600.00	\$122,000,000.00
11/1/2022	4/30/2023	5/1/2023	\$15,100,000.00	\$0.00	\$765,986.67	\$0.00	0.00%	\$765,986.67	\$137,100,000.00
5/1/2023	10/31/2023	11/1/2023	\$0.00	\$0.00	\$795,180.00	\$0.00	0.00%	\$795,180.00	\$137,100,000.00
11/1/2023	4/30/2024	5/1/2024	\$0.00	\$0.00	\$795,180.00	\$0.00	0.00%	\$795,180.00	\$137,100,000.00
5/1/2024	10/31/2024	11/1/2024	\$0.00	\$0.00	\$795,180.00	\$0.00	0.00%	\$795,180.00	\$137,100,000.00
11/1/2024	4/30/2025	5/1/2025	\$0.00	\$0.00	\$795,180.00	\$137,100.00	0.10%	\$932,280.00	\$136,962,900.00
5/1/2025	10/31/2025	11/1/2025	\$0.00	\$0.00	\$794,384.82	\$0.00	0.00%	\$794,384.82	\$136,962,900.00
11/1/2025	4/30/2026	5/1/2026	\$0.00	\$0.00	\$794,384.82	\$137,100.00	0.10%	\$931,484.82	\$136,825,800.00
5/1/2026	10/31/2026	11/1/2026	\$0.00	\$0.00	\$793,589.64	\$0.00	0.00%	\$793,589.64	\$136,825,800.00
11/1/2026	4/30/2027	5/1/2027	\$0.00	\$0.00	\$793,589.64	\$137,100.00	0.10%	\$930,689.64	\$136,688,700.00
5/1/2027	10/31/2027	11/1/2027	\$0.00	\$0.00	\$792,794.46	\$0.00	0.00%	\$792,794.46	\$136,688,700.00
11/1/2027	4/30/2028	5/1/2028	\$0.00	\$0.00	\$792,794.46	\$1,096,800.00	0.80%	\$1,889,594.46	\$135,591,900.00
5/1/2028	10/31/2028	11/1/2028	\$0.00	\$0.00	\$786,433.02	\$0.00	0.00%	\$786,433.02	\$135,591,900.00
11/1/2028	4/30/2029	5/1/2029	\$0.00	\$0.00	\$786,433.02	\$1,508,100.00	1.10%	\$2,294,533.02	\$134,083,800.00
5/1/2029	10/31/2029	11/1/2029	\$0.00	\$0.00	\$777,686.04	\$0.00	0.00%	\$777,686.04	\$134,083,800.00
11/1/2029	4/30/2030	5/1/2030	\$0.00	\$0.00	\$777,686.04	\$1,508,100.00	1.10%	\$2,285,786.04	\$132,575,700.00
5/1/2030	10/31/2030	11/1/2030	\$0.00	\$0.00	\$768,939.06	\$0.00	0.00%	\$768,939.06	\$132,575,700.00
11/1/2030	4/30/2031	5/1/2031	\$0.00	\$0.00	\$768,939.06	\$1,645,200.00	1.20%	\$2,414,139.06	\$130,930,500.00
5/1/2031	10/31/2031	11/1/2031	\$0.00	\$0.00	\$759,396.90	\$0.00	0.00%	\$759,396.90	\$130,930,500.00
11/1/2031	4/30/2032	5/1/2032	\$0.00	\$0.00	\$759,396.90	\$1,645,200.00	1.20%	\$2,404,596.90	\$129,285,300.00
5/1/2032	10/31/2032	11/1/2032	\$0.00	\$0.00	\$749,854.74	\$0.00	0.00%	\$749,854.74	\$129,285,300.00
11/1/2032	4/30/2033	5/1/2033	\$0.00	\$0.00	\$749,854.74	\$1,645,200.00	1.20%	\$2,395,054.74	\$127,640,100.00
5/1/2033	10/31/2033	11/1/2033	\$0.00	\$0.00	\$740,312.58	\$0.00	0.00%	\$740,312.58	\$127,640,100.00
11/1/2033	4/30/2034	5/1/2034	\$0.00	\$0.00	\$740,312.58	\$1,782,300.00	1.30%	\$2,522,612.58	\$125,857,800.00
5/1/2034	10/31/2034	11/1/2034	\$0.00	\$0.00	\$729,975.24	\$0.00	0.00%	\$729,975.24	\$125,857,800.00
11/1/2034	4/30/2035	5/1/2035	\$0.00	\$0.00	\$729,975.24	\$1,782,300.00	1.30%	\$2,512,275.24	\$124,075,500.00
5/1/2035	10/31/2035	11/1/2035	\$0.00	\$0.00	\$719,637.90	\$0.00	0.00%	\$719,637.90	\$124,075,500.00
11/1/2035	4/30/2036	5/1/2036	\$0.00	\$0.00	\$719,637.90	\$1,782,300.00	1.30%	\$2,501,937.90	\$122,293,200.00
5/1/2036	10/31/2036	11/1/2036	\$0.00	\$0.00	\$709,300.56	\$0.00	0.00%	\$709,300.56	\$122,293,200.00
11/1/2036	4/30/2037	5/1/2037	\$0.00	\$0.00	\$709,300.56	\$1,782,300.00	1.30%	\$2,491,600.56	\$120,510,900.00
5/1/2037	10/31/2037	11/1/2037	\$0.00	\$0.00	\$698,963.22	\$0.00	0.00%	\$698,963.22	\$120,510,900.00
11/1/2037	4/30/2038	5/1/2038	\$0.00	\$0.00	\$698,963.22	\$1,878,270.00	1.37%	\$2,577,233.22	\$118,632,630.00
5/1/2038	10/31/2038	11/1/2038	\$0.00	\$0.00	\$688,069.26	\$0.00	0.00%	\$688,069.26	\$118,632,630.00
11/1/2038	4/30/2039	5/1/2039	\$0.00	\$0.00	\$688,069.26	\$2,467,800.00	1.80%	\$3,155,869.26	\$116,164,830.00
5/1/2039	10/31/2039	11/1/2039	\$0.00	\$0.00	\$673,756.02	\$0.00	0.00%	\$673,756.02	\$116,164,830.00
11/1/2039	4/30/2040	5/1/2040	\$0.00	\$0.00	\$673,756.02	\$2,604,900.00	1.90%	\$3,278,656.02	\$113,559,930.00
5/1/2040	10/31/2040	11/1/2040	\$0.00	\$0.00	\$658,647.60	\$0.00	0.00%	\$658,647.60	\$113,559,930.00
11/1/2040	4/30/2041	5/1/2041	\$0.00	\$0.00	\$658,647.60	\$5,484,000.00	4.00%	\$6,142,647.60	\$108,075,930.00
5/1/2041	10/31/2041	11/1/2041	\$0.00	\$0.00	\$626,840.40	\$0.00	0.00%	\$626,840.40	\$108,075,930.00
11/1/2041	4/30/2042	5/1/2042	\$0.00	\$0.00	\$626,840.40	\$5,703,360.00	4.16%	\$6,330,200.40	\$102,372,570.00
5/1/2042	10/31/2042	11/1/2042	\$0.00	\$0.00	\$593,760.91	\$0.00	0.00%	\$593,760.91	\$102,372,570.00
11/1/2042	4/30/2043	5/1/2043	\$0.00	\$0.00	\$593,760.91	\$5,771,910.00	4.21%	\$6,365,670.91	\$96,600,660.00
5/1/2043	10/31/2043	11/1/2043	\$0.00	\$0.00	\$560,283.83	\$0.00	0.00%	\$560,283.83	\$96,600,660.00
11/1/2043	4/30/2044	5/1/2044	\$0.00	\$0.00	\$560,283.83	\$5,854,170.00	4.27%	\$6,414,453.83	\$90,746,490.00
5/1/2044	10/31/2044	11/1/2044	\$0.00	\$0.00	\$526,329.65	\$0.00	0.00%	\$526,329.65	\$90,746,490.00
11/1/2044	4/30/2045	5/1/2045	\$0.00	\$0.00	\$526,329.65	\$5,936,430.00	4.33%	\$6,462,759.65	\$84,810,060.00
5/1/2045	10/31/2045	11/1/2045	\$0.00	\$0.00	\$491,898.35	\$0.00	0.00%	\$491,898.35	\$84,810,060.00
11/1/2045	4/30/2046	5/1/2046	\$0.00	\$0.00	\$491,898.35	\$6,018,690.00	4.39%	\$6,510,588.35	\$78,791,370.00
5/1/2046	10/31/2046	11/1/2046	\$0.00	\$0.00	\$456,989.95	\$0.00	0.00%	\$456,989.95	\$78,791,370.00
11/1/2046	4/30/2047	5/1/2047	\$0.00	\$0.00	\$456,989.95	\$6,087,240.00	4.44%	\$6,544,229.95	\$72,704,130.00
5/1/2047	10/31/2047	11/1/2047	\$0.00	\$0.00	\$421,683.96	\$0.00	0.00%	\$421,683.96	\$72,704,130.00
11/1/2047	4/30/2048	5/1/2048	\$0.00	\$0.00	\$421,683.96	\$6,169,500.00	4.50%	\$6,591,183.96	\$66,534,630.00
5/1/2048	10/31/2048	11/1/2048	\$0.00	\$0.00	\$385,900.86	\$0.00	0.00%	\$385,900.86	\$66,534,630.00
11/1/2048	4/30/2049	5/1/2049	\$0.00	\$0.00	\$385,900.86	\$6,265,470.00	4.57%	\$6,651,370.86	\$60,269,160.00
5/1/2049	10/31/2049	11/1/2049	\$0.00	\$0.00	\$349,561.13	\$0.00	0.00%	\$349,561.13	\$60,269,160.00
11/1/2049	4/30/2050	5/1/2050	\$0.00	\$0.00	\$349,561.13	\$6,347,730.00	4.63%	\$6,697,291.13	\$53,921,430.00
5/1/2050	10/31/2050	11/1/2050	\$0.00	\$0.00	\$312,744.30	\$0.00	0.00%	\$312,744.30	\$53,921,430.00
11/1/2050	4/30/2051	5/1/2051	\$0.00	\$0.00	\$312,744.30	\$6,429,990.00	4.69%	\$6,742,734.30	\$47,491,440.00
5/1/2051	10/31/2051	11/1/2051	\$0.00	\$0.00	\$275,450.36	\$0.00	0.00%	\$275,450.36	\$47,491,440.00
11/1/2051	4/30/2052	5/1/2052	\$0.00	\$0.00	\$275,450.36	\$6,512,250.00	4.75%	\$6,787,700.36	\$40,979,190.00
5/1/2052	10/31/2052	11/1/2052	\$0.00	\$0.00	\$237,679.31	\$0.00	0.00%	\$237,679.31	\$40,979,190.00
11/1/2052	4/30/2053	5/1/2053	\$0.00	\$0.00	\$237,679.31	\$6,608,220.00	4.82%	\$6,845,899.31	\$34,370,970.00
5/1/2053	10/31/2053	11/1/2053	\$0.00	\$0.00	\$199,351.63	\$0.00	0.00%	\$199,351.63	\$34,370,970.00
11/1/2053	4/30/2054	5/1/2054	\$0.00	\$0.00	\$199,351.63	\$6,690,480.00	4.88%	\$6,889,831.63	\$27,680,490.00
5/1/2054	10/31/2054	11/1/2054	\$0.00	\$0.00	\$160,546.85	\$0.00	0.00%	\$160,546.85	\$27,680,490.00
11/1/2054	4/30/2055	5/1/2055	\$0.00	\$0.00	\$160,546.85	\$6,786,450.00	4.95%	\$6,946,996.85	\$20,894,040.00
5/1/2055	10/31/2055	11/1/2055	\$0.00	\$0.00	\$121,185.44	\$0.00	0.00%	\$121,185.44	\$20,894,040.00
11/1/2055	4/30/2056	5/1/2056	\$0.00	\$0.00	\$121,185.44	\$6,868,710.00	5.01%	\$6,989,895.44	\$14,025,330.00
5/1/2056	10/31/2056	11/1/2056	\$0.00	\$0.00	\$81,346.92	\$0.00	0.00%	\$81,346.92	\$14,025,330.00
11/1/2056	4/30/2057	5/1/2057	\$0.00	\$0.00	\$81,346.92	\$6,964,680.00	5.08%	\$7,046,026.92	\$7,060,650.00
5/1/2057	10/31/2057	11/1/2057	\$0.00	\$0.00	\$40,951.77	\$0.00	0.00%	\$40,951.77	\$7,060,650.00
11/1/2058	4/30/2058	5/1/2058	\$0.00	\$0.00	\$40,951.77	\$7,060,650.00	5.15%	\$7,101,601.77	\$0.00
Total			\$137,100,000.00	\$0.00	\$41,570,626.71	\$137,100,000.00		\$178,670,626.71	

EXHIBIT G-1

OPINIONS REQUIRED FROM COUNSEL TO BORROWER ON EFFECTIVE DATE

An opinion of the counsel of the Borrower, dated as of the Effective Date, to the effect that:

(a) the Borrower is a duly-formed municipal corporation, validly existing, and in good standing under the laws of the State of Wisconsin;

(b) the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents to which it is a party;

(c) the execution and delivery by the Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action;

(d) the Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms;

(e) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower;

(f) the execution and delivery by the Borrower of, and compliance with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Borrower is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject;

(g) the Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended; and

(h) to the knowledge of such counsel after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the System (including the Project) that are pending.

EXHIBIT G-2

OPINIONS REQUIRED FROM BOND COUNSEL ON EFFECTIVE DATE

An opinion of bond counsel, dated as of the WIFIA Bond Effective Date, to the effect that:

(a) the Borrower has been duly created and validly exists as a municipality organized under the laws of the State (including Chapter 62, Wisconsin Statutes, as amended to the date hereof (the “**Borrower Act**”)), with good right and power to issue the WIFIA Bond;

(b) the Borrower has the right and power under the laws of the State, including the Borrower Act, to enter into each Related Document, and each Related Document has been duly authorized, executed and delivered by the Borrower, is in full force and effect, and constitutes a legal, valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its respective terms and conditions;

(c) the WIFIA Bond is secured by the Net Revenues and is enforceable in accordance with its terms under the laws of the State. Under the terms of the WIFIA Loan Documents, the WIFIA Bond (i) is a Parity Obligation, (ii) ranks *pari passu* in right of payment and right of security with all other Parity Obligations and (iii) ranks senior in right of payment and right of security to all Subordinate Obligations;

(d) the WIFIA Loan Agreement creates the valid and binding assignment and pledge of the Net Revenues to secure the payment of the principal of, interest on, and other amounts payable in respect of, the WIFIA Bond, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act;

(e) all actions by the Borrower that are required for the application of Gross Earnings as required under the WIFIA Loan Agreement and under the other WIFIA Loan Documents have been duly and lawfully made;

(f) the Borrower has complied with the requirements of State law to lawfully pledge the Net Revenues and use the Gross Earnings as required by the terms of the WIFIA Loan Agreement and the other WIFIA Loan Documents; and

(h) based on existing judicial precedent, the courts of the State would find that the Borrower is not entitled to claim governmental immunity in any breach of contract action under the WIFIA Loan Documents.

We express no opinion regarding (i) the creation of a pledge of the Net Revenues other than the pledge created in accordance with the terms of Section 66.0621 of the Wisconsin Statutes or (ii) the perfection or priority of any security interest in the Net Revenues or other funds provided for under the WIFIA Resolution. Further, we express no opinion on the sufficiency of the Net Revenues.

The rights of the owners of the WIFIA Bond and the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights

and may be subject to the exercise of judicial discretion in accordance with general principles of equity, whether considered at law or in equity.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur.

EXHIBIT G-3

OPINIONS AND RELIANCE LETTER REQUIRED FROM BOND COUNSEL IN CONNECTION WITH DISBURSEMENT

I. OPINION

An opinion of bond counsel, dated as of the date of each Annual Maximum Disbursement Certificate, to the effect that:

(a) the WIFIA Bond has been duly authorized, executed and delivered by the Borrower under the laws of the State, is in full force and effect, and constitutes a legal, valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its respective terms and conditions; and

(b) the WIFIA Bond, to the extent represented by Disbursement No. [___] (i) is secured by the Net Revenues, (ii) is a Parity Obligation, (iii) is enforceable under the laws of the State without any further action by the Borrower or any other Person, (iv) ranks *pari passu* in right of payment and right of security with all other Parity Obligations and (v) ranks senior in right of payment and right of security to all Subordinate Obligations.

II. RELIANCE LETTER

A letter of bond counsel, addressed to the WIFIA Lender, dated as of the date of the opinion referred to in Part I above, to the effect that:

We have as of this date delivered our legal opinion, copy attached, with respect to the subject disbursements under the WIFIA Bond. You are entitled to rely upon such opinion as if it had been addressed to you originally. We have served only as bond counsel to the Borrower in connection with the WIFIA Loan Documents and have not and are not representing any other party in connection with the WIFIA Loan Documents. Therefore, no attorney-client relationship shall arise by virtue of our addressing this opinion to persons other than the Borrower.

EXHIBIT H

FORM OF CLOSING CERTIFICATE

August 6, 2020

Reference is made to that certain WIFIA Loan Agreement, dated as of August 6, 2020 (the “WIFIA Loan Agreement”), by and among City of Waukesha, Waukesha County, Wisconsin (the “Borrower”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “WIFIA Lender”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement.

In connection with Section 11(a) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, the undersigned, [●], as Borrower’s Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

(a) pursuant to Section 11(a)(viii) of the WIFIA Loan Agreement, attached hereto as Annex A is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed as a Borrower’s Authorized Representative in accordance with Section 21 (*Borrower’s Authorized Representative*) of the WIFIA Loan Agreement;

(b) pursuant to Section 11(a)(ii) of the WIFIA Loan Agreement, attached hereto as Annex B are copies of each Obligation Document, together with any amendments, supplements, waivers or modifications thereto, that has been entered into on or prior to the Effective Date, and each such document is complete, fully executed, and in full force and effect, and all conditions contained in such documents that are necessary to the closing of the WIFIA transactions contemplated hereby have been fulfilled;

(c) pursuant to Section 11(a)(iii) of the WIFIA Loan Agreement, attached hereto as Annex C is a copy of the Borrower’s Organizational Documents, as in effect on the Effective Date, which Organizational Documents are in full force and effect;

(d) pursuant to Section 11(a)(iv) of the WIFIA Loan Agreement, the Borrower has delivered all further instruments and documents (including any resolutions, ordinances, and supplements) other than the Related Documents as are necessary for the Borrower to execute and deliver, and to perform its obligations under, the WIFIA Loan Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Loan Documents;

(e) pursuant to Section 11(a)(viii)(A) of the WIFIA Loan Agreement, the aggregate of all funds committed to the development and construction of the Project as set forth in the Base Case Financial Model and in the Project Budget are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date;

(f) pursuant to Section 11(a)(viii)(B) of the WIFIA Loan Agreement, the Borrower has obtained all Governmental Approvals necessary (i) as of the Effective Date in connection with the Project and (ii) to execute and deliver, and perform its obligations under the WIFIA Loan Documents, and each such Governmental Approval is final, non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);

(g) pursuant to Section 11(a)(viii)(C) of the WIFIA Loan Agreement, (i) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (ii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs;

(h) pursuant to Section 11(a)(viii)(D) of the WIFIA Loan Agreement, the Borrower is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project;

(i) pursuant to Section 11(a)(viii)(E) of the WIFIA Loan Agreement, the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project during its useful life;

(j) pursuant to Section 11(a)(viii)(F) of the WIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is 39-6005642, (ii) the Borrower's Data Universal Numbering System number is 124802919, and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), which confirmation is attached hereto as Annex D;

(k) pursuant to Section 11(a)(viii)(G) of the WIFIA Loan Agreement, the representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date;

(l) pursuant to Section 11(a)(viii)(H) of the WIFIA Loan Agreement, no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since November 18, 2019;

(m) pursuant to Section 11(a)(ix) of the WIFIA Loan Agreement, none of the rating letters delivered to the WIFIA Lender pursuant to such Section 11(a)(ix) has been reduced, withdrawn or suspended as of the Effective Date;

(n) pursuant to Section 11(a)(x) of the WIFIA Loan Agreement, attached hereto as Annex E is the Base Case Financial Model, which (i) demonstrates that projected Gross Earnings are sufficient to meet the Loan Amortization Schedule, (ii) demonstrates compliance with the Rate Covenant for each Borrower Fiscal Year through the Final Maturity Date, (iii) reflects principal amortization and interest payment schedules acceptable to the WIFIA Lender, (iv) demonstrates that the Borrower has developed, and identified adequate revenues to implement, a

plan for operating, maintaining and repairing the Project over its useful life and (v) otherwise meets the requirements of such Section 11(a)(x); and

(o) pursuant to Section 11(a)(xi) of the WIFIA Loan Agreement, attached hereto as Annex F are certificates of liability insurance (other than with respect to Contract Package No. 4), and such liability insurance certificates are true and correct and demonstrate compliance with the requirements of Section 14(f) (*Affirmative Covenants – Insurance; Loss Proceeds*) of the WIFIA Loan Agreement.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

**CITY OF WAUKESHA, WAUKESHA
COUNTY, WISCONSIN,**
by its authorized representative

By: _____
Name:
Title:

ANNEX A TO EXHIBIT H
INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the Administrative Services Manager of the Waukesha Water Utility of City of Waukesha, Waukesha County, Wisconsin, a municipality organized under the laws of the State of Wisconsin (the "Borrower"), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the WIFIA Loan Documents as the Borrower's Authorized Representative (each as defined in that certain WIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this 6th day of August, 2020.

**CITY OF WAUKESHA, WAUKESHA
COUNTY, WISCONSIN,**
by its authorized representative

By: _____
Name:
Title:

EXHIBIT I

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

Environmental Protection Agency
WIFIA Director
WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Project: Water Utility Portion of Great Lakes Water Supply Project (WIFIA – N18147WI)

Dear Director:

This certificate is provided pursuant to Section 16(h)(i)(A) (*Reporting Requirements – Notices – Substantial Completion*) of that certain WIFIA Loan Agreement (the “**WIFIA Loan Agreement**”), dated as of August 6, 2020 by and between City of Waukesha, Waukesha County, Wisconsin (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through its Administrator (the “**WIFIA Lender**”).

Unless otherwise defined herein, all capitalized terms in this certificate have the meanings assigned to those terms in the WIFIA Loan Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the WIFIA Lender that:

- (a) on *[insert date Substantial Completion requirements were satisfied]*, the Project satisfied each of the requirements for Substantial Completion set forth in the *[insert reference to the design-build or similar agreements for the Project]*;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) Substantial Completion, as defined in the WIFIA Loan Agreement, has been achieved.

**CITY OF WAUKESHA, WAUKESHA
COUNTY, WISCONSIN,**
by its authorized representative

By: _____
Name:
Title:

EXHIBIT J

FORM OF QUARTERLY REPORT

United States Environmental Protection Agency
WIFIA Director
WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, DC 20460
WIFIA_Portfolio@epa.gov

Re: Water Utility Portion of Great Lakes Water Supply Project (WIFIA – N18147WI)

This Quarterly Report for the period of *[insert relevant quarterly period]* is provided pursuant to Section 16(c) (*Reporting Requirements – Construction Reporting*) of the WIFIA Loan Agreement, dated as of August 6, 2020 (the “**WIFIA Loan Agreement**”), by and between City of Waukesha, Waukesha County, Wisconsin (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”). Unless otherwise defined herein, all capitalized terms in this Quarterly Report have the meanings assigned to those terms in the WIFIA Loan Agreement.

(i) Amount Expended

Construction Contract (CC)	Original Contract Amount	Change Orders to Date	Total Estimated Costs	Estimated Costs to Complete	Costs Earned or Paid Through Previous Reporting period	Current Reporting Period Costs Earned or Paid	Total Costs Earned or Paid to date	% Costs Earned or Paid to Date
TOTAL								

(ii) Construction Progress, Governmental Approvals, Updated Schedule

Assessment of overall construction progress:

--

Notice of receipt of relevant Governmental Approvals since the Effective Date and since the prior Quarterly Report:

--

Assessment of construction progress compared to Construction Schedule provided in the prior Quarterly Report:

Construction Contract (CC)	NTP Effective Date	Original Time for Completion (days)	Original Contract Completion (date)	Time Added to Date (days)	Current Contract Completion (date)	Days Elapsed	% Contract Duration

(iii) Substantial Completion Date

Current projection for the Substantial Completion Date:

If the current projection for the substantial completion date is later than previously reported in the prior Quarterly Report, provide a description in reasonable detail for such projected delay:

(iv) Material Problems (if any)

Detailed description of all material problems (including actual and anticipated cost and/or schedule overruns, if any), encountered or anticipated in connection with the construction of the Project during the preceding quarter, together with an assessment of how such problems may impact the Construction Schedule and the meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems:

(v) Proposed or pending change orders that exceed the threshold set out in Section 16(f) (*Reporting Requirements – Modifications to Total Project Costs*) or could reasonably be expected to result in a Material Adverse Effect

(vi) Other matters related to the Project

Date: _____

**CITY OF WAUKESHA, WAUKESHA
COUNTY, WISCONSIN,**
by its authorized representative

By: _____

Name: _____

Title: _____

EXHIBIT K

FORM OF PUBLIC BENEFITS REPORT

Pursuant to Section 11(a)(xii) and Section 16(e) of the WIFIA Loan Agreement, City of Waukesha, Waukesha County, Wisconsin (the “**Borrower**”) is providing this Public Benefits Report in connection with the Great Lakes Water Supply Project (WIFIA – N18147WI):

- (i) **The estimated interest savings the Borrower is realizing through the use of the WIFIA Loan compared to comparable market rate financing:**

The estimated interest savings from use of the WIFIA Loan compared to a comparable market rate financing is \$[] million on a gross savings basis and \$[] million on a present value basis.

- (ii) **With respect to the report delivered [prior to the Effective Date][within ninety (90) days following the Substantial Completion Date][within ninety (90) following the fifth (5th) anniversary of the Substantial Completion Date], the number of jobs projected to be created by the Project during each period described below:**

The Borrower projects [] jobs to be created by the Project during the period between [[(1)] the Effective Date and the Substantial Completion Date]⁷ [and] [[(2)] the Substantial Completion Date and the fifth (5th) anniversary of the Substantial Completion Date]⁸.

- (iii) **Whether the Project will assist the Borrower in complying with applicable regulatory requirements, and if so, a narrative description describing such enhancements:**

[].

- (iv) **The amount by which the Project will [assist the Borrower (measured by percent annually) in reducing levels of Nitrogen, Phosphorus, biochemical oxygen demand (BOD) and total suspended solids (TSS)][increase the volume of potable water produced (measured in MGD annually)][increase the volume of water recycled, recharged or redirected (measured in MGD annually)][increase Class [A][B] biosolids (measured in tons annually)]⁹:**

[].

⁷ Include for both the reports delivered (i) prior to the Effective Date and (ii) 90 days following the Substantial Completion Date.

⁸ Include for both the reports delivered (i) prior to the Effective Date and (ii) 90 days following the fifth anniversary of the Substantial Completion Date.

⁹ Include one of the bracketed items as applicable.